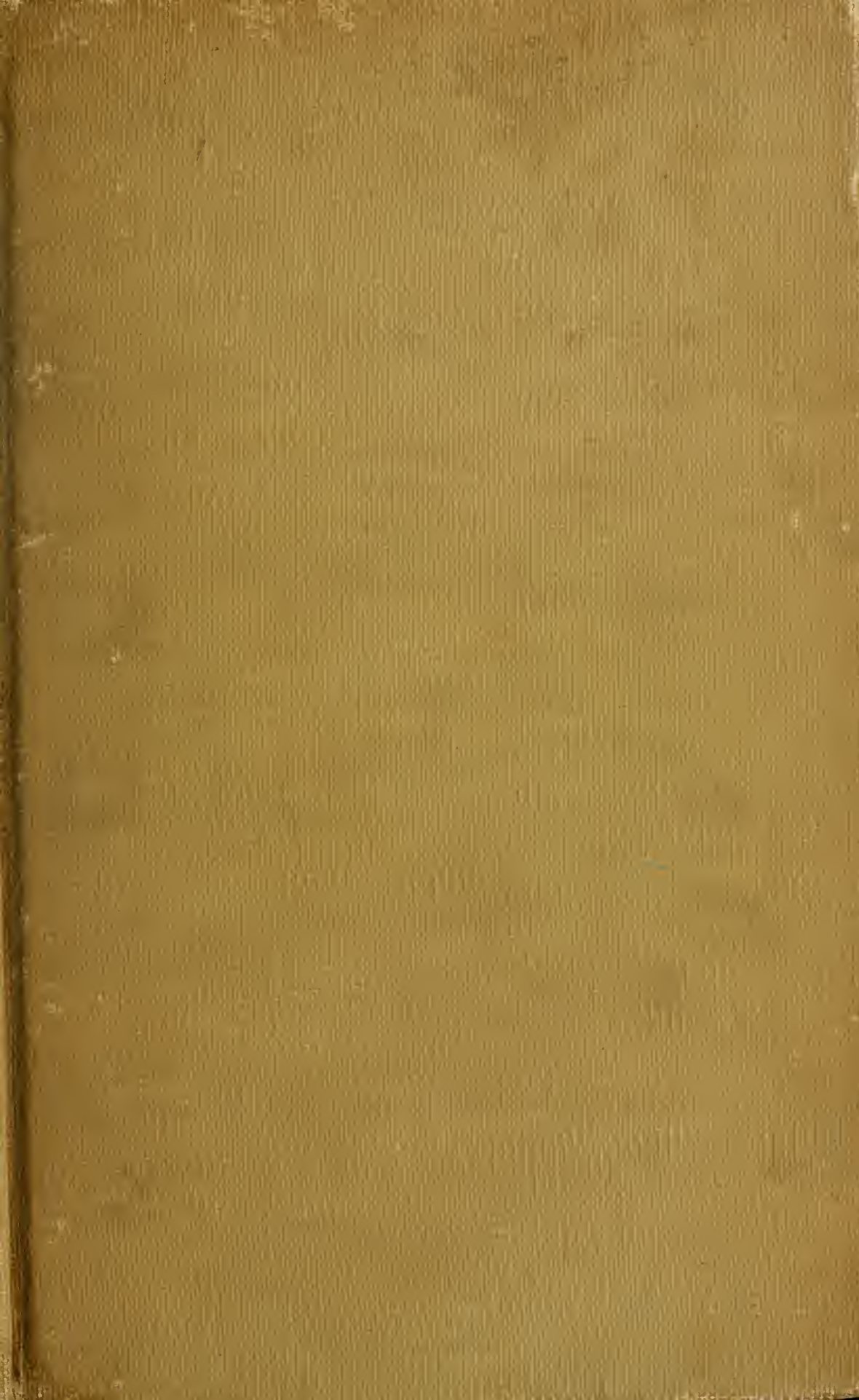






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THE
CODES AND STATUTES
OF
THE STATE OF CALIFORNIA.

BY
THEODORE H. HITTELL,
AUTHOR OF "HITTELL'S GENERAL LAWS," AND OTHER LAW PUBLICATIONS.

IN TWO VOLUMES.

VOL. I.

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PREFACE.

THIS work is designed to give, in as complete and convenient a form as is practicable, the statute laws of a general nature of the State of California, as they at present exist. These laws consist of what are known as the Codes, and various other acts which were either continued in force by the Codes, or were unaffected by them, or have been passed since their adoption. The separate acts referred to, if they treat of subjects also treated of in the Codes, will be found inserted in proper places in the Codes; otherwise, they will be found in the latter portion of the work under the general head of "Statutes in Force." Many special and local acts, particularly such as modify the general rules of the Codes, or such as affect many persons, or are of important application in many counties, are also given, the plan being to include all the general and as much of the special and local legislation of the State as can be contained in a digest of reasonable compass. Where the special and local acts are not given in full, they are referred to in such a manner as to guide the inquirer and enable him readily to find what he seeks for; and in all cases the special and local laws affecting particular counties are referred to under the heads of the respective counties.

Declaration of Independence.

JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

i. WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism; it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation until his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be

elects; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation;

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war; in peace, friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connections between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed and signed by the following members:

JOHN HANCOCK,
SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE,
ELBRIDGE GERRY,
JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON,
STEPHEN HOPKINS,
WILLIAM ELLERY,
CÆSAR RODNEY,
GEORGE READ,
THOMAS M'KEAN,
ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HART,
ABRAHAM CLARK,
WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN,
ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,

OLIVER WOLCOTT,
SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHARLES CARROLL, OF CARROLLTON.
WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS,
GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON,
GEORGE CLYMER,
JAMES SMITHE,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS,
EDWARD RUTLEDGE,
THOMAS HEYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLETON,
BUTTON GWINNETT,
LYMAN HALL,
GEORGE WALTON.

Constitution of the United States.

ii. *Preamble.*

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Legislative Power—Congress.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

House of Representatives.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Senate.

SEC. 3. The senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the

senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Elections for senators and representatives.

SEC. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

Sessions of congress.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

iii. Powers of houses of congress—Quorum.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Compensation of members—Privileges—Disabilities.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of

their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Manner of passing bills—Orders, resolutions, etc.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Powers of congress.

SEC. 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations,^(a) and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization,^(b) and uniform laws on the subject of bankruptcies throughout the United States;

^(a) The states held to have concurrent power with congress to regulate commerce with understanding that, in case of conflict, state regulations must give way. *People vs. Carson*, 4 Cal. 46.

The power held exclusive in congress. *People vs. Ingersoll*, 1 Cal. 192.

But congress may regulate when exercised. *Mt. Hill vs. Carson*, 6 Cal. 29.

This power extends to every species of commercial intercourse, and may be exercised upon persons as well as property.

The act of April 20, 1862, to discourage Chinese immigration in violation of this provision. *Lin Sing vs. Washburn*, 2 Cal. 564.

A state has no power to pass a law imposing a toll on

logs and lumber floated down a stream from that state into an adjoining state. *Carson River L. Co. vs. Patterson*, 33 Cal. 364.

The tax upon passengers, provided for by the act of May 11, 1862 (Stats. 1862, 539), was a regulation of commerce and repugnant to the U. S. Constitution. *People vs. Raymond*, 31 Cal. 492.

The power to exclude from the limits of a state persons in the full possession of their faculties, sound in body, who are neither paupers, vagabonds or criminals, is a regulation of commerce, which the state, even in the absence of legislation on the subject, cannot exercise. *State vs. Steamship Constitution*, 42 Cal. 578.

^(b) See this power discussed. *Ex parte Knowles*, 5 Cal. 390.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;^(a)

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriations of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Limitations of the powers of congress.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other district tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appro-

(a) The U. S. Constitution confers upon congress the power to issue treasury notes or bills of credit, not in express terms but as a power necessarily implied; and also to make such notes or bills a legal tender in payment of debts. *Lick vs. Faulkner*, 25 Cal. 404.

This clause does not prevent a state from passing laws to punish counterfeiting. *People vs. White*, 34 Cal. 183.

priations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

iv. *Limitation of powers of individual states.*

SEC. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisals; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts;^(a) pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts;^(b) or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports^(c) except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

v. *Executive power—President and vice-president.*

SECTION 1. The executive power shall be invested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected, as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the

^(a) Taxes are not left within the meaning of this clause. *People vs. Washburn*, 30 Cal. 218.

^(b) If the end or object contemplated by a contract be defeated by a law, the operative force of the obligation of the contract is impaired. *Edmon vs. Major*, 9 Cal. 91.

^(c) A contract is a contract.

A contract, and the right to be remedied the remedy as to a contract, is a contract by denying all means of enforcement, is a contract to that it is impaired by a prohibition to sue upon it. *Byrd vs. Leitch*, 1 Cal. 200. *See also* *It vs. It*, *Smith vs. Dugan*, 19 Cal. 200.

A contract with the time for performance, passed between the time of a judgment under which a judicial sale would have been made, and the time of such sale, does not impair the obligation of a contract. *Moore vs. Martin*, 30 Cal. 400.

A warrant against a debtor duly presented and "not paid for want of funds" is a valid check and it is not competent for the creditor to declare it is valid or to authorize a third party to collect it. *Rome vs. Lathall*, 30 Cal. 270.

An act providing that, if a person who has been convicted of petty larceny shall again commit petty larceny he shall be deemed guilty of a felony, is not an ex post facto law, even when applied to a person who committed the first offense prior to the passage of the statute. *Ex parte Gutierrez*, 45 Cal. 429.

A law changing the forms of procedure by which persons accused of crime are to be tried for offenses committed before the law was passed, is not an ex post facto law. *People vs. Mortimer*, 46 Cal. 114.

(c) The revenue act of April 29, 1878, so far as it imposes a tax upon bills of lading for transportation of gold or silver from this state to another, is in conflict with this clause. *Brunnagin vs. Tillinghast*, 18 Cal. 229.

The act of May 3, 1852, providing for appointment of a pauper at San Francisco, was not unconstitutional as imposing duties on imports by state authority, because a state has a right to pass inspection laws, and this involves the power of enforcing them by adequate provisions to pay inspecting officers. *Addison vs. Sauhnier*, 19 Cal. 82.

senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.](^a)

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

Powers and duties of president.

SEC. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardon for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties,^(b) provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall

(a) This paragraph is superseded by Article XII. of the Amendments to the Constitution, post, 19.

(b) A treaty made by the United States, removing the disability of aliens to inherit, is valid and within the intent of the constitution. *People vs. Gerke*, 5 Cal. 381.

It is not within the constitutional power of the state legislature to confer jurisdiction upon federal courts or prescribe the means or mode of its exercise. *Greely vs. Townsend*, 25 Cal. 604.

appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Messsages—Calling together and adjourning congress, etc.

SEC. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Removal of officers on impeachments.

SEC. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

vi. Judicial department.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish.^(a) The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Judicial power.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;^(b)—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.^(c)

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.^(d)

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been com-

(a) Congress cannot confer jurisdiction upon a state court. *Ex parte Rossides*, 5 Cal. 340.

(b) The states are not deprived by the constitution of the power to confer upon their own courts all admiralty and maritime jurisdiction, and congress has no power to make this jurisdiction exclusive to the federal courts. *Taylor vs. Steamer Columbia*, 5 Cal. 268, *Warner vs. Eagle Ship*, 9 Cal. 627.

(c) The relations of the federal and state courts to each other discussed. *Johnson vs. Gordon*, 4 Cal. 368; *Ferris vs. Coover*, 11 Cal. 175.

(d) The supreme court cannot exercise appellate jurisdiction over state courts. *Johnson vs. Gordon*, 4 Cal. 368; but see *Ferris vs. Coover*, 11 Cal. 176.

mitted; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Treason—Evidence—Punishment.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

vii. *Acts and records of states and their proof.*

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.^(a)

Privileges of citizens.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.^(b)

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.^(c)

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.^(d)

New states—Territories.

SEC. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Republican form of government.

SEC. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

(a) The record of a judgment in another state certified in conformity with the act of congress, is admissible in evidence in this state; but the legislature of this state has power to require a less amount of proof. *Parke vs. Williams*, 7 Cal. 247.

(b) The revenue act of May 18, 1853 (providing for tax on consigned goods), does not violate this clause. *People vs. Coleman*, 4 Cal. 46.

The right of transit through the state with slaves, what will save a forfeiture, and "comity," discussed. *Ex parte Archy*, 7 Cal. 147.

(c) Our courts cannot control the executive discretion in surrendering fugitives from justice, nor compel

a surrender; but the executive having acted, its discretion may be inquired into by the courts. *Ex parte P. B. Manchester*, 5 Cal. 237.

A law authorizing the arrest of a fugitive from justice before a demand for his surrender has been made, and his detention for a reasonable time to afford an opportunity for such demand, is not in conflict with this section. *Ex parte Cubreth*, 49 Cal. 436.

(d) The right of a slaveholder over slaves brought to this state before the adoption of the constitution, and the police powers of the state over fugitive slaves, discussed. *Ex parte Perkins*, 2 Cal. 424.

ARTICLE V.

viii. *Amendments.*

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

ix. *Debts—Supreme law of land—No religious test.*

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

RATIFICATION OF CONSTITUTION.

Ratification.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

New Hampshire.

JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM,
RUFUS KING.

Connecticut.

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WILLIAM LIVINGSTON,
DAVID BREARLEY,
WILLIAM PATERSON,
JONATHAN DAYTON.

Pennsylvania.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

Delaware.

GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

Maryland.

JAMES M'HENRY,
DANIEL, of St. Tho. Jenifer,
DANIEL CARROLL.

Virginia.

JOHN BLAIR,
JAMES MADISON, JR.

North Carolina.

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

South Carolina.

JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW,
ABRAHAM BALDWIN.

Attest :

WILLIAM JACKSON, *Secretary.*

Amendments

TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED ACCORDING TO THE PROVISIONS OF
THE FIFTH ARTICLE OF THE FOREGOING CONSTITUTION.

ARTICLE I.

x. *Free exercise of religion, etc.*

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE II.

Right to bear arms.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE III.

No soldier to be billeted, etc.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE IV.

Unreasonable searches prohibited.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE V.

xi. *Criminal proceedings.*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE VI.

Mode of trial.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE VII.

Rights of trial by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE VIII.

Bails—Fines.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE IX.

Rights not enumerated.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE X.

xii. Powers reserved.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to these states respectively, or to the people. [*Amendment, proposed 25th September, 1789; ratified 15th December, 1791.*]

ARTICLE XI.

Limitation of judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. [*Amendment, proposed 5th March, 1794; ratified 8th January, 1798.*]

ARTICLE XII.

Election of president and vice-president.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in presence of the senate and house of rep-

representatives, open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States. [*Amendment, proposed 12th December, 1803; ratified 5th September, 1804.*]

ARTICLE XIII.

xiii. *Slavery prohibited.*

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation. [*Amendment, proposed 1st February, 1865; declared ratified 18th December, 1865.*]

ARTICLE XIV.

Citizens, who are—Rights of citizenship.

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of representation.

SEC. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the

The provision which forbids a state from denying any person within its jurisdiction the equal protection of the laws, and not creating any new legal rights but operating upon legal rights already found there established, and declaring that still as they were in each state, they should be enjoyed by all persons alike, Ward vs. Flood, 46 Cal. 36.

By the fourteenth amendment the privileges and immunities of citizens of the United States, thereby conferred, are guaranteed and protected in every state beyond the operation of state laws; but the power of a state to determine the class of inhabitants who may vote within her limits is not curtailed by the amendment. Van Valkenburg vs. Brown, 43 Cal. 43.

members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Certain persons disqualified from holding office.

SEC. 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two thirds of each house, remove such disability.

Payment of public debt not to be questioned—Rebel debts not to be assumed.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article. [*Amendment proposed 16th June, 1866; declared ratified 28th July, 1868.*]

ARTICLE XV.

Right of all citizens to vote.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude.^(a)

SEC. 2. The congress shall have power to enforce this article by appropriate legislation. [*Amendment, proposed 27th February, 1869; declared ratified 30th March, 1870.*]

(a) The fifteenth amendment took away the authority of the state to discriminate against citizens of the United States on account of either race, color or previous

condition of servitude; but the power of exclusion upon all other grounds, including that of sex, remains intact. *Van Valkenburg vs. Brown*, 43 Cal. 43.

Treaty of Peace, Friendship, Limits and Settlement,

BETWEEN THE UNITED STATES OF AMERICA AND THE
MEXICAN REPUBLIC.

Dated at Guadalupe Hidalgo, 2d February, 1848.

Ratified by the President U. S., 16th March, 1848.

Exchanged at Queretaro, 30th May, 1848.

Proclaimed by the President U. S., 4th July, 1848.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A Proclamation.

xiv. WHEREAS, a Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic, was concluded and signed at the city of Guadalupe Hidalgo, on the second day of February, one thousand eight hundred and forty-eight, which treaty, as amended by the senate of the United States, and being in the English and Spanish languages, is word for word as follows:—

In the name of Almighty God:—

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence, wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries—that is to say, the president of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the president of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following

TREATY OF PEACE, FRIENDSHIP, LIMITS AND SETTLEMENT, BETWEEN THE
UNITED STATES OF AMERICA AND THE MEXICAN REPUBLIC.

ARTICLE I.

Peace.

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II.

Suspension of hostilities.

Immediately upon the signature of this Treaty, a convention shall be entered into between a commissioner or commissioners appointed by the general-in-chief

of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be re-established, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Raising blockades—Withdrawal of troops, etc.

Immediately upon the ratification of the present Treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this Treaty shall then have been ratified by the government of the Mexican Republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican Republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner, orders shall be dispatched to the persons in charge of the custom-houses at all the ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this Treaty by the government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican Republic by the troops of the United States, in virtue of the above stipulation, shall be completed within one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner, if possible.

ARTICLE IV.

Restoration of castles, forts, prisoners, etc.

Immediately after the exchange of ratifications of the present Treaty, all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war within the limits of the Mexican Republic, as about to be established by the following article, shall be definitively restored to the said republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this Treaty shall be duly ratified by the government of the Mexican Republic. To this end, immediately upon the signature of this Treaty, orders shall be dispatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of

Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulations as regards the restoration of artillery, apparatus of war, etc.

The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner, if possible: the Mexican government hereby engaging, as in the foregoing article, to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this Treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such case a friendly arrangement shall be entered into between the general-in-chief of the said troops and the Mexican government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this Treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

Boundary-line.

The boundary-line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila (or, if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised edition. Published at New York, in 1847, by J. Disturnell." Of which map a copy is added to this Treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San

Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is herewith added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary-line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary-line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

ARTICLE VI.

Navigation of Gulf of California and Colorado River.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary-line defined in the preceding article; it being understood that this passage is to be by navigating the gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or part run upon the river Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

Navigation of Gila River and Rio Bravo del Norte.

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the Fifth Article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Privileges of Mexicans—Citizenship—Property of non-resident Mexicans.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans,^(a) shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.^(b)

ARTICLE IX.

Admission of Mexicans to citizenship in the United States.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the constitution; and in the meantime shall be maintained^c and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out.]

ARTICLE XI.

Inursions of savages into Mexican territory.

Considering that a great part of the territories which, by the present Treaty, are to be comprehended for the future within the limits of the United States, is

(a) Those who have declared such intention still remain aliens and foreigners. *People vs. Naglee*, 1 Cal. 232.

(b) A mere grant of land by the Mexican governor, without compliance by the grantee with the further requisites of the Mexican laws, forms but an inchoate title, and the land passed to the United States, which held it subject to the trust imposed by the Treaty and equities of the grantee. The execution of this trust is a political power, to which the judiciary is not competent. *Leese vs. Clarke*, 3 Cal. 17, but see *Ferris vs. Coover*, 10 Cal. 569; see also *Leese vs. Clarke*, 18 Cal. 531.

The validity of Mexican grants of land in California must be determined by the Mexican laws. *Id.* *Vanderhill vs. Banks*, 3 Cal. 27, 47; *Ferris vs. Coover*, 10 Cal. 569.

When California was ceded to the United States, the rights of property of its citizens remained unchanged. By the law of nations those rights were sacred and inviolable, and the obligation passed to the new government to protect and maintain them. The term property as applied to lands embraces all titles legal or equitable, perfect or imperfect. *Teschmicher vs. Thompson*, 18 Cal. 12.

Mexican grants are legal titles, and most of them, when united to possession, are such equitable titles as are entitled to protection and give a right to a possessory action. *Lathrop vs. Mills*, 19 Cal. 513.

The provisions of the treaty of Guadalupe Hidalgo operated as a confirmation *in presenti* of all perfect titles to lands in California held under Spanish or Mexican grants. *Minturn vs. Brower*, 24 Cal. 644.

now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States whensoever this may be necessary; and that, when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics, nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them, and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

Fifteen million dollars to be paid to Mexico.

In consideration of the extension acquired by the boundaries of the United States, as defined in the Fifth Article of the present Treaty, the government of the United States engages to pay to that of the Mexican Republic the sum of fifteen millions of dollars.

Installments of payment—Interest on deferred payments.

Immediately after this Treaty shall have been duly ratified by the government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said government by that of the United States, at the city of Mexico, in gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual installments of

three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present Treaty by the Mexican government, and the first of the installments shall be paid at the expiration of one year from the same day. Together with each annual installment, as it falls due, the whole interest accruing on such installment from the beginning shall also be paid.

ARTICLE XIII.

Assumption by United States of claims against Mexico.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated, and decided against the Mexican Republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican Republic shall be absolutely exempt for the future from all expenses whatever on account of the said claims.

ARTICLE XIV.

Discharge of claims of American citizens against Mexico.

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this Treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

Satisfaction of claims.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive; provided that, in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records, or documents in the possession or power of the government of the Mexican Republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as congress may designate, make an application in writing for the same, addressed to the Mexican minister for foreign affairs, to be transmitted by the secretary of state of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents, so specified, which shall be in their possession or power (or authenticated copies or extracts of the same), to be transmitted to the said secretary of state, who shall immediately deliver them over to the said board of commissioners; provided, that no such application shall be

made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Fortifications for security.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify, for its security.

ARTICLE XVII.

Treaty of amity, commerce and navigation.

The Treaty of amity, commerce and navigation, concluded at the city of Mexico on the fifth day of April, A. D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said Treaty may be incompatible with any stipulation contained in the present Treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this Treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

Supplies for American troops previous to evacuation.

All supplies whatever, for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the government of the United States hereby engaging and pledging its faith to establish, and vigilantly to enforce all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

Rules of importation into Mexican ports.

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:—

1. All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the Third Article of this Treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

2. The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-

houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.

3. All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

4. All merchandise, effects, and property described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

5. But if any merchandise, effects, or property described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.

6. The owners of all merchandise, effects, or property described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the custom-house of such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX.

Certain property to be admitted to entry.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this Treaty and the restoration of the custom-houses conformably with the stipulation in the third article, in such case all merchandise, effects, and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of the signature of this Treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding articles shall apply.

ARTICLE XXI.

Future disagreement—Arbitration.

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this Treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in

the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

War—Private property—Respect for churches, etc.—Prisoners of war.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules, absolutely, where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:

1. The merchants of either republic then residing in the other shall be allowed to remain twelve months (for those dwelling in the interior), and six months (for those dwelling at the seaports), to collect their debts and settle their affairs; during which periods they shall enjoy the same protection and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hindrance; conforming therein to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments, for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

2. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement, or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are, for its own troops. But if any officer shall break his parole by leaving the district so as-

signed him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII.

Ratification of treaty.

This Treaty shall be ratified by the president of the United States of America, by and with the advice and consent of the senate thereof; and by the president of the Mexican Republic, with the previous approbation of its general congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this Treaty of peace, friendship, limits, and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST.	[L. S.]
LUIS G. CUEVAS.	[L. S.]
BERNARDO COUTO.	[L. S.]
MIGL. ATRISTAN.	[L. S.]

And whereas the said Treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Queretaro on the thirtieth day of May last, by Ambrose H. Sevier and Nathan Clifford, Commissioners on the part of the government of the United States, and by Señor Don Luis de la Rosa, minister of relations of the Mexican Republic, on the part of that government:

Now, therefore, be it known, that I, JAMES K. POLK, President of the United States of America, have caused the said Treaty to be made public, to the end

that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this fourth day of July, one thousand
[L. s.] eight hundred and forty-eight, and of the Independence of the
United States the seventy-third.

JAMES K. POLK.

By the President:

JAMES BUCHANAN, *Secretary of State*.

Articles referred to in the Fifteenth Article of the Preceding Treaty.

FIRST AND FIFTH ARTICLES OF THE UNRATIFIED CONVENTION
BETWEEN THE UNITED STATES AND THE MEXICAN REPUBLIC,
OF THE 20TH NOVEMBER, 1843.

ARTICLE I.

xv. *Commissioners of claims.*

All claims of citizens of the Mexican Republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican Republic, which for whatever cause were not submitted to, nor considered nor finally decided by, the commission, nor by the arbiter appointed by the convention of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the president of the Mexican Republic, and the other two by the president of the United States, with the approbation and consent of the senate. The said commissioners, thus appointed, shall, in the presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs which shall be presented, the principles of right and justice, the law of nations, and the treaties between the two republics.

ARTICLE V.

Umpire.

All claims of citizens of the United States against the government of the Mexican Republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the eleventh April, 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this convention, on the points submitted to the umpire under the late convention, and his decision shall be final and conclusive. It is also agreed that, if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

Proclamations to the People of California.

I.

Proclamation,

CALLING A CONVENTION TO FORM A STATE CONSTITUTION FOR CALIFORNIA.

xvi. *Character of General Riley's administration—Mexican laws in force—Convention for State Constitution.*

Congress having failed, at its recent session, to provide a new government for this country, to replace that which existed on the annexation of California to the United States, the undersigned would call attention to the means which he deems best calculated to avoid the embarrassments of our present position.

The undersigned, in accordance with instructions from the secretary of war, has assumed the administration of civil affairs in California, not as a military governor, but as the executive of the existing civil government. In the absence of a properly appointed civil governor, the commanding officer of the department is, by the laws of California, *ex officio* civil governor of the country, and the instructions from Washington were based on the provisions of these laws. This subject has been misrepresented, or at least misconceived, and currency given to the impression that the government of the country is still military. Such is not the fact. The military government ended with the war, and what remains is the civil government recognized in the existing laws of California. Although the command of the troops in this department, and the administration of civil affairs in California, are, by the existing laws of the country, and the instructions of the president of the United States, temporarily lodged in the hands of the same individual, they are separate and distinct. No military officer, other than the commanding general of the department, exercises any civil authority by virtue of his military commission, and the powers of the commanding general, as *ex officio* governor, are only such as are defined and recognized in the existing laws. The instructions of the secretary of war make it the duty of all military officers to recognize the existing civil government, and to aid its officers with the military force under their control. Beyond this, any interference is not only uncalled for, but strictly forbidden.

The laws of California, not inconsistent with the laws, constitution, and treaties of the United States, are still in force, and must continue in force until changed by competent authority. Whatever may be thought of the right of the people to temporarily replace the officers of the existing government by others appointed by a provisional territorial legislature, there can be no question that the existing laws of the country must continue in force till replaced by others made and enacted by competent power. That power, by the treaty of peace, as well as from the nature of the case, is vested in congress. The situation of California, in this respect, is very different from that of Oregon. The latter

was without laws, while the former has a system of laws, which, though somewhat defective, and requiring many changes and amendments, must continue in force till repealed by competent legislative power. The situation of California is almost identical with that of Louisiana; and the decisions of the supreme court, in recognizing the validity of the laws which existed in that country previous to its annexation to the United States, where not inconsistent with the constitution and laws of the United States, or repealed by legitimate legislative enactments, furnish us a clear and safe guide in our present situation. It is important that citizens should understand this fact, so as not to endanger their property and involve themselves in useless and expensive litigation, by giving countenance to persons claiming authority which is not given them by law, and by putting faith in laws which can never be recognized by legitimate courts.

As congress has failed to organize a new territorial government, it becomes our imperative duty to take some active measures to provide for the existing wants of the country. This, it is thought, may be best accomplished by putting in full vigor the administration of the laws as they now exist, and completing the organization of the civil government, by the election and appointment of all officers recognized by law; while, at the same time, a convention, in which all parts of the territory are represented, shall meet and frame a state constitution, or a territorial organization, to be submitted to the people for their ratification, and then proposed to congress for its approval. Considerable time will necessarily elapse before any new government can be legitimately organized and put in operation; in the interim, the existing government, if its organization be completed, will be found sufficient for all our temporary wants.

A brief summary of the organization of the present government may not be uninteresting. It consists: 1. Of a governor, appointed by the supreme government: in default of such appointment, the office is temporarily vested in the commanding military officer of the department. The powers and duties of the governor are of a limited character, but fully defined and pointed out by the laws. 2. A secretary, whose duties and powers are also properly defined. 3. A territorial or departmental legislature, with limited power to pass laws of a local character. 4. A superior court (tribunal superior) of the territory, consisting of four judges and a fiscal. 5. A prefect and sub-prefects for each district, who are charged with the preservation of public order and the execution of the laws; their duties correspond, in a great measure, with those of district marshals and sheriffs. 6. A judge of first instance for each district. This office is, by a custom not inconsistent with the laws, vested in the first alcalde of the district. 7. Alcaldes who have concurrent jurisdiction among themselves in the same district, but are subordinate to the higher judicial tribunals. 8. Local justices of the peace. 9. Ayuntamientos, or town councils. The powers and functions of all these officers are fully defined in the laws of this country, and are almost identical with those of the corresponding offices in the Atlantic and western states.

In order to complete this organization with the least possible delay, the undersigned, in virtue of power in him vested, does hereby appoint the first of August next as the day for holding a special election for delegates to a general convention, and for filling the offices of judges of the superior court, prefects and sub-prefects, and all vacancies in the offices of first alcalde (or judge of first instance), alcaldes, justices of the peace, and town councils. The judges of the superior court, and district prefects, are by law executive appointments, but being desirous that the wishes of the people should be fully consulted, the governor will appoint such persons as may receive the plurality of votes in their respective districts, provided they are competent and eligible to the office. Each district will therefore elect a prefect and two sub-prefects, and fill the vacancies in the offices of first alcalde (or judge of first instance) and of alcaldes. One

judge of the superior court will be elected in the districts of San Diego, Los Angeles and Santa Barbara; one in the districts of San Luis Obispo and Monterey; one in the districts of San Jose and San Francisco; and one in the districts of Sonoma, Sacramento and San Joaquin. The salaries of the judges of the superior court, the prefects and judges of first instance, are regulated by the governor, but cannot exceed, for the first, four thousand dollars per annum; for the second, two thousand five hundred dollars, and for the third, one thousand five hundred dollars. These salaries will be paid out of the civil fund which has been formed from the proceeds of the customs, provided no instructions to the contrary are received from Washington. The law requires that the judges of the superior court meet within three months after its organization, and form a tariff of fees for the different territorial courts and legal officers, including all alcaldes, justices of the peace, sheriffs, constables, etc.

All local alcaldes, justices of the peace, and members of town councils elected at the special election, will continue in office till the first January, one thousand eight hundred and fifty, when their places will be supplied by the persons who may be elected at the regular annual election, which takes place in November, at which time the election of members to the territorial assembly will also be held.

The general convention for forming a state constitution or a plan for territorial government, will consist of thirty-seven delegates, who will meet in Monterey on the first day of September next. These delegates will be chosen as follows:—

The district of San Diego will elect two delegates, of Los Angeles four, of Santa Barbara two, of San Luis Obispo two, of Monterey five, of San Jose five, of San Francisco five, of Sonoma four, of Sacramento four, of San Joaquin four. Should any district think itself entitled to a greater number of delegates than the above named, it may elect supernumeraries, who, on the organization of the convention, will be admitted or not at the pleasure of that body.

The places for holding the election will be as follows: San Diego, San Juan Capistrano, Los Angeles, San Fernando, San Buenaventura, Santa Barbara, Nepoma, San Luis Obispo, Monterey, San Juan Baptiste, Santa Cruz, San Jose de Guadalupe, San Francisco, San Rafael, Bodega, Sonoma, Benicia (the places for holding election in the Sacramento and San Joaquin districts will be hereafter designated). The local alcaldes and members of the ayuntamientos or town councils, will act as judges and inspectors of elections. In case there should be less than three such judges and inspectors present at each of the places designated on the day of election, the people will appoint some competent person to fill the vacancies. The polls will be open from ten o'clock A. M. to four P. M., or until sunset, if the judges deem it necessary.

Every free male citizen of the United States and of Upper California, twenty-one years of age, and actually resident in the district where the vote is offered, will be entitled to the right of suffrage. All citizens of Lower California who have been forced to come to this territory on account of having rendered assistance to the American troops during the recent war with Mexico, should also be allowed to vote in the district where they actually reside.

Great care should be taken by the inspectors that votes are received only from bona fide citizens actually resident in the country. These judges and inspectors, previous to entering upon the duties of their office, should take an oath faithfully and truly to perform these duties. The returns should state distinctly the number of votes received for each candidate, be signed by the inspectors, sealed, and immediately transmitted to the secretary of state for file in his office.

The following are the limits of the several districts:—

1. The district of San Diego is bounded on the south by Lower California, on the west by the sea, on the north by the parallel of latitude including the mission San Juan Capistrano, and on the east by the Colorado river.

2. The district of Los Angeles is bounded on the south by the district of San Diego, on the west by the sea, on the north by the Santa Clara river, and a parallel of latitude running from the headwaters of that river to the Colorado.

3. The district of Santa Barbara is bounded on the south by the district of Los Angeles, on the west by the sea, on the north by Santa Inez river, and a parallel of latitude existing from the headwaters of that river to the summit of the coast range of mountains.

4. The district of San Luis Obispo is bounded on the south by the district of Santa Barbara, on the west by the sea, on the north by a parallel of latitude including San Miguel, and on the east by the coast range of mountains.

5. The district of Monterey is bounded on the south by the district of San Luis Obispo, and on the north and east by a line running east from New Year's Point to the summit of the Santa Clara range of mountains, thence along the summit of that range to the Arroyo de los Leagas, and a parallel of latitude extending to the summit of the coast range, and along that range to the district of San Luis Obispo.

6. The district of San Jose is bounded on the north by the straits of Carquenas, the bay of San Francisco, the arroyo of San Francisquito, and a parallel of latitude to the summit of Santa Clara mountains, on the west and south by the Santa Clara mountains and the district of Monterey, and on the east by the coast range.

7. The district of San Francisco is bounded on the west by the sea, on the south by the districts of San Jose and Monterey, and on the east and north by the bay of San Francisco, including the islands in that bay.

8. The district of Sonoma includes all the country bounded by the sea, the bays of San Francisco and Suisun, the Sacramento river and Oregon.

9. The district of Sacramento is bounded on the north and west by the Sacramento river, on the east by the Sierra Nevada, and on the south by the Cosumnes river.

10. The district of San Joaquin includes all the country south of the Sacramento district, and lying between the coast range and the Sierra Nevada.

The method here indicated to attain what is desired by all, viz., a more perfect political organization, is deemed the most direct and safe that can be adopted, and one fully authorized by law. It is the course advised by the president, and by the secretaries of state and of war of the United States, and is calculated to avoid the innumerable evils which must necessarily result from any attempt at illegal local legislation. It is therefore hoped that it will meet the approbation of the people of California, and that all good citizens will unite in carrying it into execution.

Given at Monterey, California, this third day of June, A. D. one thousand eight hundred and forty-nine.

B. RILEY,

Brevet Brig.-Gen. U. S. A., and Governor of California.

Oficial: H. W. HALLECK,

Brevet Capt. and Secretary of State.

II.

PROCLAMATION TO THE PEOPLE OF CALIFORNIA.

xvii. *Constitution for ratification.*

THE delegates of the people assembled in convention have formed a constitution, which is now presented for your ratification. The time and manner of

voting on this constitution, and of holding the first general election, are clearly set forth in the schedule; the whole subject is therefore left for your unbiased and deliberate consideration.

The prefect (or person exercising the functions of that office) of each district will designate the places for opening the polls, and give due notice of the election, in accordance with the provisions of the constitution and schedule.

The people are now called upon to form a government for themselves, and to designate such officers as they desire to make and execute the laws. That their choice may be wisely made, and that the government so organized may secure the permanent welfare and happiness of the people of the new state, is the sincere and earnest wish of the present executive, who, if the constitution be ratified, will, with pleasure, surrender his powers to whomsoever the people may designate as his successor.

Given at Monterey, California, this twelfth day of October, A. D. one thousand eight hundred and forty-nine.

B. RILEY,

Brevet Brig.-Gen. U. S. A., and Governor of California.

Official: H. W. HALLECK,

Brevet Capt. and Secretary of State.

III.

PROCLAMATION TO THE PEOPLE OF CALIFORNIA.

xviii. Resignation of General Riley as governor of California.

A NEW executive having been elected and installed into office, in accordance with the provisions of the constitution of the State, the undersigned hereby resigns his powers as governor of California. In thus dissolving his official connection with the people of this country, he would tender to them his heartfelt thanks for their many kind attentions, and for the uniform support which they have given to the measures of his administration. The principal object of all his wishes is now accomplished—the people have a government of their own choice, and one which, under the favor of Divine Providence, will secure their own prosperity and happiness, and the permanent welfare of the new state.

Given at San Jose, California, this twentieth day of December, A. D. one thousand eight hundred and forty-nine.

B. RILEY,

Brevet Brig.-Gen. U. S. A., and Governor of California.

By the Governor: H. W. HALLECK,

Brevet Capt. and Secretary of State.

xix. Relinquishment of military to civil government.

[ORDERS No. 41.]

HEADQUARTERS TENTH MILITARY DEPARTMENT,
SAN JOSE, CALIFORNIA, Dec. 20, 1849.

1. The brigadier-general commanding the department has this day relinquished the administration of civil affairs in California, to the execution of the government organized under the provisions of the constitution, ratified by the people of California at the recent general election.

2. Brevet Captain H. W. Halleck, corps of engineers, is relieved from duty as secretary of state.

By order of

GENERAL RILEY.

ED. U. S. CANBY,

Assistant Adjutant-General.

Constitution of the State of California.

Adopted by the Convention, 10th October, 1849.

Ratified by the People, 13th November, 1849.

Proclaimed, 20th December, 1849.

Amended, 4th November, 1856, and 3d September, 1862.

XX. Preamble.

WE, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

Inalienable rights.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.^(a)

Popular government.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Jury trial.

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.^(b)

Religious worship, and liberty of conscience.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State;^(c) and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief;^(d) but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

(a) The "Sunday Law" of April 10, 1858, held to be in violation of this section. *Ex parte Newman*, 9 Cal. 502.

The "Sunday Law" of May 20, 1861, held to be not in violation of this section; and the dissenting opinion of Justice Field in *Ex parte Newman* adopted. *Ex parte Andrews*, 18 Cal. 678.

(b) The right to a jury trial cannot be waived by implication. *Smith vs. Pollock*, 2 Cal. 92.

A reference to ascertain the damages sustained by violation of an injunction does not violate this section; the party availing himself of the stringent and extraordinary process of injunction is considered as waiving his constitutional right to a jury trial. *Russell vs. Elliott*, 2 Cal. 245.

The words "prescribed by law" look to actual legislation upon the subject, and cannot be extended to a permission of the exercise of the power to others than the legislature. *Exline vs. Smith*, 5 Cal. 112.

The language of this provision was used with reference to the right as it exists at common law. The right cannot be claimed in equity cases unless an issue of fact be framed. *Koppikus vs. State Capitol Commissioners*, 16 Cal. 248.

Failure on the part of a party to appear on the trial of a civil cause operates as a waiver of a jury trial under the 179th section of the practice act; but if a jury

is called, it must consist of twelve persons; a less number does not constitute a legal jury without express consent. *Gillespie vs. Benson*, 18 Cal. 409.

A court has no power to send an ordinary suit at law to a referee for trial against the objection of either party; and this whether the suit involves the examination of a long account or not. Our statute as to referring cases (except in cases of consent) applies solely to equity causes. *Grim vs. Norris*, 19 Cal. 140.

(c) The "Sunday Law" of 1858 held to violate this provision on the ground that it involved the enforced observance of a day held sacred by a religious sect and was a discrimination in favor of that sect and a violation of the religious freedom of others. *Ex parte Newman*, 9 Cal. 502.

The "Sunday Law" of 1861 (substantially similar to that of 1858) held purely a civil regulation, not designed to subserve any religious purpose. Held further, that the constitution does not make void legislation, the effect of which is to promote religion or even advance the interests of a sect or class of religionists. *Ex parte Andrews*, 18 Cal. 678.

(d) A witness is competent without respect to his religious sentiments or conviction—the law leaving his competency to legal sanctions or at least to considerations independent of religious sentiments or convictions. *Fuller vs. Fuller*, 17 Cal. 605.

xxi. Habeas corpus.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.^(a)

Excessive bail, fines, and punishments.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

All offenses bailable—one exception.

SEC. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.^(b)

Personal rights and rights of property.

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petty larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury;^(c) and, in any trial in any court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions.^(d) No person shall be subject to be twice put in jeopardy for the same offense;^(e) nor shall he be compelled, in any criminal case, to be a witness against himself;^(f) nor be deprived of life, liberty or property without due process of law;^(g) nor shall private property be taken for public use without just compensation.^(h)

(a) The writ of habeas corpus should not issue to run out of the country, unless for good cause shown, as the absence, disability or refusal of the local judge to act. The mere caprice of the prisoner ought not to prevail against the interests of the people and public convenience. Ex parte Ellis, 11 Cal. 222.

The issuance of the writ is not obligatory upon the supreme court in term time, but rests in the sound legal discretion of the court, though its allowance may be obligatory upon the judges in their individual capacities. Id.

(b) Admission to bail in capital cases, where the proof is evident or the presumption great, may be forbidden by legislation; but in all other cases, admission to bail is a right which no judge or court can properly refuse. People vs. Tinder, 19 Cal. 539.

The provision that bail is a matter of right contemplates only those cases in which the party has not been already convicted. Ex parte Voll, 41 Cal. 29.

(c) The 273d section of the criminal practice act, directing that where a person is indicted under a wrong name, and he gives his true name, it shall be entered on the minutes and the prisoner tried under his true name (see Penal Code, sec. 989), is not a violation of this clause. The meaning of this provision is that the person shall be indicted, not the person by his true name, but the person himself. People vs. Kelly, 6 Cal. 210.

The grand jury should be constituted according to law, but the objection that it is not so constituted must be made at the particular time provided by statute. The legislature may constitutionally prescribe rules of practice, and among these is the provision as to the time and mode of excepting to irregularities of proceeding. People vs. Arnold, 15 Cal. 476.

(d) Courts have a large discretion over the conduct of proceedings before them and may limit arguments of counsel to reasonable time; but in capital cases this should be done only in very extraordinary and peculiar instances. The opportunity of a full defense is a constitutional right without which a prisoner cannot be lawfully convicted. People vs. Keenan, 13 Cal. 581.

(e) On a second trial for murder upon the same or a different indictment, defendant can plead a conviction of manslaughter as an acquittal of the crime of murder. A conviction of manslaughter is an acquittal of every offense charged in the indictment higher than the particular one of which the prisoner is found guilty. People vs. Gilmore, 4 Cal. 376.

This provision was never intended to apply to cases in which a judgment of conviction was reversed in the appellate court and a new trial ordered. In such cases,

it being apparent from the judgment of reversal that such trial was erroneous, the defendant in fact was not in jeopardy. The order for a new trial places the party in the same position as though no trial had been had. People vs. March, 6 Cal. 543.

Where upon a previous trial it turned out that there was a misnomer of the party injured, and thereupon the indictment was discharged and the new indictment found: Held, that the accused was not placed twice in jeopardy. It would be a contradiction in terms to say that a person was put in jeopardy by an indictment under which he could not be convicted, and it is obviously immaterial whether the inability to convict arise from a variance between the proof and indictment or from some defect in the indictment. People vs. McNeely, 17 Cal. 332.

If a person charged with crime has once been acquitted by the verdict of a jury he cannot be held to answer again for the same offense, no matter by what mistakes or errors on the part of the court, jury or prosecution the acquittal was obtained. People vs. Webb, 38 Cal. 467.

When a person is placed on trial upon a valid indictment before a competent court and jury, he is "in jeopardy" within the meaning of the constitution. People vs. Cage, 48 Cal. 323.

(f) A witness is not privileged from answering on the ground that his answer would disgrace him, but solely on the ground that he is not compelled to criminate himself. Ex parte Rowe, 7 Cal. 184.

(g) The provisions of the 31st section of the practice act authorizing judgment against an absent defendant, for whom the court has appointed an attorney with privilege of coming and opening it in six months, is not in violation of this clause. Ware vs. Robinson, 9 Cal. 107.

The right to practice law is not "property" within the constitutional meaning of the term. The act of 25th April, 1863, requiring attorneys and litigants to file affidavits of allegiance to the government, does not contravene this provision. Cohen vs. Wright, 22 Cal. 293.

This provision is not applicable to proceedings by the state to obtain from citizens their proper contributions to the expenses of administering the government. High vs. Shoemaker, 22 Cal. 363.

(h) The destruction of a building to stop the spread of a conflagration cannot be deemed a taking of private property for public use within the meaning of this clause. Dunbar vs. San Francisco, 1 Cal. 355.

A lot of land in the harbor of San Francisco, lying within the line of a street laid down and recognized by

Liberty of speech and press, and law of libel.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

xxii. Popular assemblies.

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Uniformity of general laws.

SEC. 11. All laws of a general nature shall have a uniform operation.^(a)

the city on its official map, and being in the actual possession of a person claiming to be the owner, cannot be taken and appropriated to public use by the city without payment of just compensation, there being no title to the land in the city. *Gunter vs. Geary*, 1 Cal. 462; *Surocco vs. Geary*, 3 Cal. 69.

Where private property is appropriated to public use by supervisors, without making provision for paying for the same, such act is illegal and may be enjoined. *McAnn vs. Sierra County*, 7 Cal. 121.

Parties in possession of land claiming title thereto are presumed to be the owners, and are entitled to compensation before it can be taken for public uses. *Sacramento Valley Railroad Company vs. Moffatt*, 7 Cal. 577.

A municipal corporation cannot take private property for public use without making compensation in advance or providing a fund out of which compensation shall be made as soon as the amount to be paid can be determined. *Colton vs. Rossi*, 9 Cal. 595.

The means of compensating the owner must be provided before the property is taken. *McCauley vs. Weller*, 12 Cal. 500; *Bensley vs. Mountain Lake Water Company*, 13 Cal. 306.

Where compensation for land taken by a county for public use does not precede or accompany the taking, the entire action of the county authorities is void; and in such case a suit against the county for the compensation does not lie. *Johnson vs. Alameda County*, 14 Cal. 106.

If the use for which the property is taken be to satisfy a great public want or public exigency, it is a public use within the meaning of the constitution, and the state is not limited to any given mode of applying the property to satisfy the want or meet the exigency. *Gilmer vs. Lime Point*, 18 Cal. 229.

The use of land for railroad purposes is a public use. *Contra Costa Railroad Co. vs. Moss*, 23 Cal. 323.

A statute divesting the title of a purchaser of property which had been previously mortgaged by foreclosure proceedings, to which the purchaser was a stranger, would be unconstitutional. *Skinner vs. Buck*, 29 Cal. 253.

A statute validating and confirming a contract previously made in good faith but not in the precise mode prescribed by the existing law (such as a deed by the attorney in fact of a married woman before she was allowed to make a power of attorney) does not operate to divest vested rights, and is not therefore unconstitutional. *Dentzel vs. Waldie*, 30 Cal. 138.

Land is not "taken for public use" until the last act has been performed which, under the mode of condemnation adopted, is required to transfer the title or subject it to the servitude. *Fox vs. Western Pacific R. R. Co.*, 31 Cal. 538.

An act providing that, in assessing the value of land taken for a railroad, allowance shall be made for any benefit that will accrue to the person whose land is taken, is not unconstitutional. *San Francisco, A. & S. R. R. Co. vs. Caldwell*, 31 Cal. 367.

Land may be taken under the power of eminent domain for what is called in the statutes a "private road." *Sherman vs. Buick*, 32 Cal. 241.

This clause has no application to assessments for street work in San Francisco under the consolidation act as amended in 1862 or 1863. *Chambers vs. Satterlee*, 40 Cal. 497.

The "public use" mentioned in the constitution is

left in large measure to legislative determination. *Stockton & Visalta R. R. Co. vs. Stockton*, 41 Cal. 149.

An act requiring persons claiming compensation for land to be taken for alteration of a public road to present their claims within a certain time, or be deemed as waiving all right to damages, does not violate this clause. *Potter vs. Ames*, 43 Cal. 75.

An act providing that a railroad company may occupy or use land pending proceedings to condemn it, without providing compensation for the use and waste thereof if the proceedings fail, is in violation of the constitution. *Davis vs. San Lorenzo R. R. Co.*, 47 Cal. 517.

(a) The revenue act of May 18, 1853, does not violate this section. By "uniform operation" it was intended that laws of this character should, as nearly as possible, affect persons and property alike. A perfectly equal tax law is impossible from the very nature of the subject. *People vs. Coleman*, 4 Cal. 46.

An act regulating fees in office is not an act of a general nature; hence a fee bill for a separate county is not in violation of this section. *Ryan vs. Johnson*, 5 Cal. 86.

Act to remedy the failure of a tax collector to publish names of owners and lists of property is not general but special in its nature. *Moore vs. Patch*, 12 Cal. 265.

The word "uniform" does not mean "universal." The constitution is violated only when a privilege extended to one is denied to another on substantially the same facts. *Smith vs. Judge of Twelfth District Court*, 17 Cal. 547.

This provision is not violated by the "Sunday Law" of 1861. *Ex parte Andrews*, 18 Cal. 678.

The act of May 3, 1852, providing for the appointment of a gauger at the port of San Francisco, is constitutional. It is not a general but a special law. *Addison vs. Saulnier*, 19 Cal. 82.

An act allowing a percentage to be taxed as costs in litigated cases, though made applicable to one county alone, operates equally and uniformly upon all parties in the same category and is not unconstitutional. *Corwin vs. Ward*, 35 Cal. 195.

This clause means that every law shall have a uniform operation upon all the citizens or persons or things of any class upon which it purports to take effect and that it shall not grant to any citizen or class of citizens privileges which upon the same terms shall not equally belong to other citizens. *Brooks vs. Hyde*, 37 Cal. 366.

A city ordinance to prohibit noisy amusements and prevent immorality is not, on account of its local operation, repugnant to the constitution. *Ex parte Smith and Keating*, 38 Cal. 702.

The constitution does not require laws to have a uniform operation unless they are of a general nature; and whether a law is of a general or special nature depends, in a measure, upon the legislative purpose discernible in its enactment. *People vs. Central Pacific R. R. Co.*, 43 Cal. 398.

The constitution does not prohibit a special act because the subject with which it deals might have been the subject of a general law. *People vs. Central Pacific R. R. Co.*, 43 Cal. 398.

An act for securing mechanics' liens, which fails to give to laborers other than those working on mining claims a lien, is not for that reason unconstitutional. *Quale vs. Moon*, 48 Cal. 478.

Military power.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this state in time of peace; and, in time of war, no appropriation for a standing army shall be for a longer time than two years.

Quartering of soldiers.

SEC. 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

Representation.

SEC. 14. Representation shall be apportioned according to population.

xxiii. *Imprisonment for debt.*

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud;^(a) and no person shall be imprisoned for a militia fine in time of peace.

Laws prohibited.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.^(b)

Rights of foreigners.

SEC. 17. Foreigners who are or who may hereafter become bona fide residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property, as native born citizens.^(c)

Slavery prohibited.

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Search warrants.

SEC. 19. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but for probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

xxiv. *Treason defined, and how punished.*

SEC. 20. Treason against the state shall consist only in levying war against it,

(a) In a suit to recover money received by a person as agent, he cannot be arrested without showing some fraudulent conduct on his part. *Ex parte Holdforth*, 1 Cal. 438.

A party cannot be imprisoned under a judgment in a civil action for assault and battery. *Ex parte Prader*, 6 Cal. 239.

(b) The act of April 15, 1851, re-incorporating the city of San Francisco, did not extinguish the debts of the city incurred under the former charter, nor did its property escheat to the state. An act passed with such intention would be unconstitutional. *Smith vs. Morse*, 2 Cal. 524.

The suspension by statute of remedies or any part thereof existing when the contract was made is more or less impairing the obligation of the contract. *Thorne vs. Hays*, 4 Cal. 127.

The 41st section of the act concerning conveyances, requiring conveyances made before the passage of the act to be recorded, does not impair the obligation of a contract. *Stafford vs. Lick*, 7 Cal. 479.

The provisions of the "Consolidation Act" of San Francisco, requiring the sinking fund created by act of 1851 to be first exhausted by redemption of certificates of stock, before the treasurer should make payment annually of \$50,000, set apart by act of 1851 for payment of interest, etc., are unconstitutional as violating a contract. *Tallant vs. Woods*, 7 Cal. 579.

This provision in regard to contracts relates to contracts between individuals and not to contracts between individuals and the state. *Myers vs. English*, 9 Cal. 341.

The right to practice law is not a "contract" and therefore the "Test Act" does not violate the obligation of a contract. *Cohen vs. Wright*, 22 Cal. 293.

(c) A British seaman on board a British vessel of which a British subject is master may, when discharged in a port of this state without any fault on his part, sue for and recover his wages in a state court. *Pugh vs. Gillam*, 1 Cal. 485.

An alien may purchase and hold land and make leases and sustain actions till "office found," and proof of his alienage cannot be made available in a collateral proceeding. *Ramires vs. Kent*, 2 Cal. 558.

An alien may hold real estate against every one and even against the government until "office found." *Attorney General vs. Folsom*, 5 Cal. 373.

Held that a non-resident alien cannot inherit land in this state. *Siemsen vs. Bofer*, 6 Cal. 250; *Norris vs. Hoyt*, 18 Cal. 217.

This section leaves the right of non-resident foreigners in respect to real property as it exists at common law. *Farrell vs. Enright*, 12 Cal. 450.

The act of April 19, 1856, permitting non-resident aliens to inherit, is constitutional; and the right of bona fide resident aliens may be enlarged but cannot be abridged by the legislature. *People vs. Rogers*, 13 Cal. 159.

By virtue of its police power the state possesses jurisdiction to arrest and restrain fugitive slaves and to remove them from its borders, but not so as to obstruct the owner in reclaiming his slave. *Ex parte Perkins*, 2 Cal. 424.

The doctrine of "comity," as to the right of transit through and delay with slaves in the state, discussed. *Ex parte Archy*, 9 Cal. 147.

adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.

Popular rights retained by the people.

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 22. The legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years. [*Amendment, proposed 1866; ratified 6th September, 1871.*^(a)]

ARTICLE II.

RIGHT OF SUFFRAGE.

XXV. *Who are or may be electors.*

SECTION 1. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirteenth day of May, eighteen hundred and forty-eight, of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law; provided, that nothing herein contained shall be construed to prevent the legislature, by a two thirds concurrent vote, from admitting to the right of suffrage Indians, or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.^(b)

Privileges of electors.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

Militia duty.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Residence.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States;^(c) nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

Idiot, insane and infamous persons.

SEC. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

Ballot.

SEC. 6. All elections by the people shall be by ballot.

(a) The amendment constituted a new and additional section.

(b) The act of April 25, 1863, providing for taking the votes of California volunteers outside of the counties of their legal residence, was unconstitutional. *Bourland vs. Hildreth*, 26 Cal. 161; *Day vs. Jones*, 31 Cal. 261.

(c) The mere fact that a man is a soldier in the United States army does not disqualify him from voting in this state; nor does a mere residence or sojourn in the country as a soldier make a man a citizen or prove him such. The fact of such sojourn or residence neither creates nor destroys citizenship. *Orman vs. Riley*, 15 Cal. 48.

ARTICLE III.

DISTRIBUTION OF POWERS.

xxvi. *Separate departments.*

The powers of the government of the State of California shall be divided into three separate departments: the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.^(a)

ARTICLE IV.

LEGISLATIVE DEPARTMENT.^(b)**xxvii.** *Senate and assembly—Enacting clause of laws.*

SECTION 1. The legislative power of this State shall be vested in a senate and assembly, which shall be designated the legislature of the State of California; and the enacting clause of every law shall be as follows: "The people of the State of California, represented in senate and assembly, do enact as follows."

Sessions of legislature.

SEC. 2. The sessions of the legislature shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members, unless the governor of the State shall, in the interim, convene the legislature by proclamation. No session shall continue longer than one hundred and twenty days. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)

(a) The legislature has no power to confer other than judicial functions upon the court of sessions. *Burgoyne vs. San Francisco*, 5 Cal. 9; *Phelan vs. San Francisco*, 6 Cal. 531. The legislature cannot confer upon a county judge power of designating place and manner of holding an election, as it is a ministerial and not a judicial act, and an election thus held will be void. *Dickey vs. Hurlburt*, 5 Cal. 343.

Where any of the duties or powers of one of the departments are not disposed of or distributed to particular officers of that department, such powers or duties are left to the disposal of the legislature. *Ross vs. Whitman*, 6 Cal. 361.

From the necessity of the case, supervisors exercise judicial, legislative and executive powers in matters relating to the police and fiscal regulations of counties. *People vs. El Dorado County*, 8 Cal. 58.

The assessment of taxes is not a judicial act, and cannot be exercised by the court of sessions. 10 Cal. 402.

The constitution does not place either department above the law, nor make either independent of the other. The legislature can pass such laws as it may deem expedient, subject only to the prohibitions of the constitution. If it oversteps those limits, and attempts to impair the obligation of contracts, or to pass ex post facto laws, or grant special acts of incorporation for other than municipal purposes, the judiciary will set aside its legislation and protect the rights it has asailed. *McCauley vs. Brooks*, 16 Cal. 11.

Nothing in the constitution prohibits the legislature from declaring the mayor of a city to be ex officio a justice of the peace. *Urdias vs. Morrill*, 22 Cal. 473.

This article refers to the distribution of the powers of the state government and not to those of local governments created by the legislature; so that there is nothing in it to prevent the police judge of the city and county of San Francisco from performing the duties of the office of police commissioner as an ex officio office. *People vs. Provines*, 34 Cal. 520.

(b) The constitution is not to be regarded as a grant of power but rather as a restriction upon the powers of the legislature; and it is competent for the legislature to exercise all powers not forbidden by the constitution, or delegated to the general government, or prohibited by the United States constitution. *People vs. Coleman*, 4 Cal. 46; *People vs. Bigler*, 5 Cal. 23.

The motives of the legislature in passing a law will not be inquired into. *People vs. Bigler*, 5 Cal. 23.

An act may be void in part for its unconstitutionality, and good so far as it is constitutional. *People vs. Burbank*, 12 Cal. 378.

The legislature cannot require the supreme court to give the reasons of its decisions in writing. The

constitutional duty of the court is discharged by the renditions of its decisions. *Houston vs. Williams*, 13 Cal. 24.

The constitution is not a grant but a restriction upon the power of the legislature, and hence an express enumeration of legislative powers and privileges therein cannot be considered as the exclusion of others not named, unless accompanied by negative terms. *Ex parte McCarthy*, 29 Cal. 395.

The legislature has no power to legalize defective pleadings in pending actions. *People vs. Mariposa Company*, 31 Cal. 196.

It is not within the constitutional power of the state legislature to confer jurisdiction upon federal courts or prescribe the means or mode of its exercise. *Greely vs. Townsend*, 25 Cal. 604.

An act of the legislature granting a new trial or reopening a judgment in favor of the people, in a civil action in which the people are a party, is a mere consent on the part of the people, one of the parties, that a new trial be granted or the judgment reopened and is not unconstitutional. *People vs. Frisbie*, 26 Cal. 135.

Where a new county is erected out of territory taken in part from another county, the legislature has the power to create a board of commissioners to ascertain, settle and report the amount due from one to the other and to compel the supervisors of the county indebted to levy a tax to pay the amount so reported due. *People vs. Alameda County*, 26 Cal. 641.

The legislature can delegate to a board of supervisors power to make an order to prevent the carrying on of an offensive trade, prejudicial to public health, within the limits of a city. *Ex parte Shrader*, 33 Cal. 279.

The legislature cannot delegate the power to make laws, conferred upon it by the constitution, to the people of the state or to any portion of the people. *Ex parte Wall*, 48 Cal. 279.

The legislature has no power to refer a statute to the people to decide by a popular vote whether it shall go into effect. *Ex parte Wall*, 48 Cal. 279.

A law which submits to a popular vote of the electors of a county the question whether certain territory of an adjoining county shall be annexed to it and that if such vote should be in the affirmative the adjoining county should be disorganized and the territory annexed, is not unconstitutional. *People vs. Nally*, 49 Cal. 478.

(c) The original section was as follows:

SEC. 2. The sessions of the legislature shall be annual, and shall commence on the first Monday of January, next ensuing the election of its members, unless the governor of the state shall, in the interim, convene the legislature by proclamation.

Election and terms of assemblymen.

SEC. 3. The members of the assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Wednesday in September, unless otherwise ordered by the legislature, and their term of office shall be two years. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)

Qualifications of legislators.

SEC. 4. Senators and members of assembly shall be duly qualified electors in the respective counties and districts which they represent.

xxviii. *Election and terms of senators.*

SEC. 5. Senators shall be chosen for the term of four years, at the same time and places as members of assembly; and no person shall be a member of the senate, or assembly, who has not been a citizen and inhabitant of the State, and of the county, or district, for which he shall be chosen, one year next before his election. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(b)

Number and classes of senators.

SEC. 6. The number of senators shall not be less than one third, nor more than one half, of that of the members of assembly; and at the first session of the legislature after this section takes effect, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen biennially. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)

Increase in number.

SEC. 7. When the number of senators is increased, they shall be appointed by lot, so as to keep the two classes as nearly equal in number as possible.

Organization of legislative houses.

SEC. 8. Each house shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

Quorum.

SEC. 9. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

xxix. *Rules—Expulsions.*

SEC. 10. Each house shall determine the rules of its own proceedings, and may, with the concurrence of two thirds of all the members elected, expel a member.

Journals.

SEC. 11. Each house shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

Privileges of legislators.

SEC. 12. Members of the legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and they shall not be sub-

(a) Original section:

SEC. 3. The members of the assembly shall be chosen annually, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, unless otherwise ordered by the legislature, and their term of office shall be one year.

(b) Original section:

SEC. 5. Senators shall be chosen for the term of two years, at the same time and places as members of assembly; and no person shall be a member of the senate or assembly who has not been a citizen and inhabitant of the state one year, and of the county or district for

which he shall be chosen six months next before his election.

(c) Original section:

SEC. 6. The number of senators shall not be less than one third, nor more than one half, of that of the members of assembly; and at the first session of the legislature after this constitution takes effect, the senators shall be divided by lot as equally as may be, into two classes; the seats of the senators of the first class shall be vacated at the expiration of the first year, so that one half shall be chosen annually.

ject to any civil process during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Vacancies.

SEC. 13. When vacancies occur in either house, the governor, or the person exercising the functions of the governor, shall issue writs of elections to fill such vacancies.

Open doors.

SEC. 14. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

xxx. *Adjournments.*

SEC. 15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Origination of bills.

SEC. 16. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended in the other.

Governor's approval—Passage of bills notwithstanding governor's objections.

SEC. 17. Every bill which may have passed the legislature, shall, before it becomes a law, be presented to the governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall be a law, in like manner as if he had signed it, unless the legislature, by adjournment, prevent such return.^(a)

Impeachments.

SEC. 18. The assembly shall have the sole power of impeachment; and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted, without the concurrence of two thirds of the members present.

Officers liable to impeachment—Judgment.

SEC. 19. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, justices of the supreme court, and judges of the district courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under the state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried, for misdemeanors in office, in such a manner as the legislature may provide.

(a) The court may go behind the record evidence of a statute, and inquire whether it was passed or approved in accordance with the constitution. *Fowler vs. Peirce*, 2 Cal. 165.

In approving a statute, the executive acts as a component part of the law-making power, and his power of approval ceases on the adjournment of the legislature. *Id.*

In nearly all the printed copies of the constitution there is a mistake in the omission of the final letter "s" in the word "Sundays." The erroneous decision in *Heburn vs. Whitman*, 6 Cal. 659, was based upon this mistake. See *Price vs. Whitman*, 8 Cal. 412. The ten days must be computed by excluding the day on

which the bill is presented to the governor. *Price vs. Whitman*, 8 Cal. 412.

Where the governor sent a bill with his objections to the house in which it originated on the last of the ten days, and, on account of an adjournment of the house for the day, the bill was re-delivered to the governor and retained by him: Held, that it was not returned within ten days within the meaning of the constitution. *Harpending vs. Haight*, 39 Cal. 189.

In computing the ten days within which a bill may be returned by the governor, the day on which it is presented to the governor must be excluded. *Iron Mountain Co. vs. Haight*, 39 Cal. 540.

xxx. Disabilities of legislators.

SEC. 20. No senator, or member of assembly, shall, during the term for which he shall have been elected, be appointed to any civil office of profit, under this state, which shall have been created, or the emoluments of which shall have been increased, during such term, except such office as may be filled by elections by the people.

Ineligibility to office—Proviso.

SEC. 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this state; provided, that officers in the militia, to which there is attached no annual salary, or local officers and postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.^(a)

Embezzlement—Defalcation of public funds.

SEC. 22. No person who shall be convicted of the embezzlement, or defalcation, of the public funds of this state, shall ever be eligible to any office of honor, trust, or profit under this state; and the legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement, or defalcation, as a felony.

Public moneys and accounts.

SEC. 23. No money shall be drawn from the treasury but in consequence of appropriations made by law.^(b) An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the legislature.

Compensation.

SEC. 24. The members of the legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected.

xxxii. Title of laws—Revision and amendment of laws.

SEC. 25. Every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title,^(c) and no law shall be revised, or amended, by reference to this title; but in such case, the act revised, or section amended, shall be re-enacted and published at length.^(d)

Divorces.

SEC. 26. No divorce shall be granted by the legislature.

(a) The Federal office of surveyor-general is a lucrative office, and the office of controller of state an office of profit. *Melony vs. Whitman*, 10 Cal. 38.

To constitute a "holding" there must be a concurrence of two wills, that of the appointing power and that of the person appointed. *Id.*

The word "eligible" means capable of being chosen. A person holding a lucrative federal office cannot receive votes cast so as to give him a right to take the state office upon or after resigning the federal office. *Searcy vs. Grow*, 15 Cal. 117.

The term "compensation" means the income of the office, not the profit over and above the necessary expenses. *Id.*

A person who held and discharged the duties of inspector of customs of the United States under appointment of the collector at San Francisco, but whose appointment was never approved by the secretary of the treasury: Held not to be ineligible to the office of district judge. *People vs. Turner*, 20 Cal. 142.

(b) The power of controlling and disposing of the revenue of the state is vested in the legislature. It is within the power of the judiciary to declare the action of the legislature unconstitutional, where that action exceeds the limits of the supreme law; but the courts have no means and no power to avoid the effects of non-action. *Myers vs. English*, 9 Cal. 341.

This clause means only that no money shall be drawn except in pursuance of law. *McCauley vs. Brooks*, 16 Cal. 11.

(c) A law is constitutional where the subjects embraced in the same statute and not expressed in the title have congruity or proper connection. *De Witt vs. San Francisco*, 2 Cal. 289.

This provision is merely directory. *Washington vs. Page*, 4 Cal. 388; *Pierpont vs. Crouch*, 10 Cal. 315.

A law "to regulate fees," which provides for the amount of fees and at the same time that a part of such fees shall be paid into the treasury is not objectionable as embracing more than one object and that not expressed in the title. *Ream vs. Siskiyou County*, 56 Cal. 620.

(d) The amendment of a statute operates as an absolute repeal of the old statute or section amended, even if the amendment takes nothing away from the old law, but merely adds a proviso in certain cases. *Billings vs. Harvey*, 6 Cal. 381.

Where a law enters into and becomes a part of a contract, it cannot be so altered or amended as to impair or destroy the rights of the parties. *Smith vs. Curtis*, 7 Cal. 584.

A statute may be repealed by implication; and where a subsequent act is repugnant to a prior one, the last operates, without a repealing clause, as a repeal of the first; and where two acts passed at different times are not in terms repugnant, yet if it is clearly evident that the last was intended as a revision or substitute of the first, it will repeal the first to the extent in which its provisions are revised or substituted. *Pierpont vs. Crouch*, 10 Cal. 315.

Lotteries.

SEC. 27. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

Census.

SEC. 28. The enumeration of the inhabitants of this state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken, under the direction of the congress of the United States in the year one thousand eight hundred and fifty, and every subsequent ten years, shall serve as the basis of representation in both houses of the legislature.

Apportionment of legislators.

SEC. 29. The number of senators and members of assembly shall, at the first session of the legislature, holden after the enumeration herein provided for and made, be fixed by the legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of assembly shall not be less than twenty-four, nor more than thirty-six, until the number of inhabitants within this state shall amount to one hundred thousand; and after that period, at such ratio that the whole number of members of assembly shall never be less than thirty, nor more than eighty.

xxxiii. *Congressional, senatorial and assembly districts.*

SEC. 30. When a congressional, senatorial, or assembly district, shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county shall be divided in forming a congressional, senatorial, or assembly district, so as to attach one portion of a county to another county; but the legislature may divide each county into as many congressional, senatorial, or assembly districts, as such county may by apportionment be entitled to. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

Corporations.

SEC. 31. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes.^(b) All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed.

Dues.

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators, and other means, as may be prescribed by law.^(c)

Powers and privileges.

SEC. 33. The term corporations as used in this article shall be construed to include all associations and joint-stock companies, having any of the powers or

(a) Original section:

SEC. 30. When a congressional, senatorial or assembly district shall be composed of two or more counties, it shall not be separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or assembly district.

(b) The term "municipal" is limited to governmental, and cannot be extended to commercial purposes. *Low vs. Marysville*, 5 Cal. 214.

Exclusive franchises and privileges may be conferred by the legislature upon persons or corporations. *California State Telegraph Company vs. Alta Telegraph Company*, 22 Cal. 598.

An act which purports on its face to be and is in fact a special act, cannot be converted into a general act by a declaration of the legislature in another act that it shall be considered a general act. *San Francisco vs. Spring Valley W. W.*, 48 Cal. 493.

Corporations, except for municipal purposes, must be formed under general laws, and can exercise no powers except such as are conferred by general laws. *San Francisco vs. Spring Valley W. W.*, 48 Cal. 493.

A private corporation to supply a city with water cannot be created by special act, nor can power to supply a city with water be conferred on a private corporation by special act. *San Francisco vs. Spring Valley W. W.*, 48 Cal. 493.

(c) As to the power of the legislature to regulate the individual liability of stockholders in corporations, see *Robinson vs. Bidwell*, 22 Cal. 379.

The legislature of 1861 proposed as an amendment to the constitution and as a portion of section 33 to this article the abrogation and annulling of sections 32 and 36; but the proposition was not adopted by the legislature of 1862. See Statutes of 1861, 662, and Statutes of 1862, 582.

privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Banks and bank circulation.

SEC. 34. The legislature shall have no power to pass any act granting any charter for banking purposes; but associations may be formed, under general laws, for the deposit of gold and silver, but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

xxxiv. *Banking privileges.*

SEC. 35. The legislature of this state shall prohibit, by law, any person or persons, association, company, or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

Individual liability of corporators.

SEC. 36. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for his proportion of all its debts and liabilities.^(a)

Organization of cities and villages.

SEC. 37. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.^(b)

Legislative elections.

SEC. 38. In all elections by the legislature, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

Effect of amendments.

SEC. 39. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to Article Four by the legislature of eighteen hundred and sixty-one, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in said amendments. [*Amendment, proposed 1861; ratified 3d September, 1862.*]

ARTICLE V.

EXECUTIVE DEPARTMENT.

xxxv. *Governor.*

SECTION 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the governor of the State of California.

Election and term.

SEC. 2. The governor shall be elected by the qualified electors at the time and places of voting for members of the assembly, and shall hold his office four years from and after the first Monday in December subsequent to his election,

(a) Legislation is necessary to give practical effect to this provision, and without the aid of legislation it is inoperative. *Trench vs. Teschemaker*, 24 Cal. 518.

(b) The proposed Central Pacific Railroad, leading from Sacramento, the eastern portion of the state, is so far a public improvement and sufficiently for the apparent interest of Sacramento that a law authorizing the municipality to become a stockholder is not unconstitutional, as imposing a tax upon a local community for an improvement in which it has no peculiar interest. *Robinson vs. Bidwell*, 22 Cal. 379.

The powers of a municipal corporation may be increased, restricted or repealed by the legislature at will, saving only vested rights. *Blanding vs. Burr*, 13 Cal. 343.

The fact that the legislature has once exercised its powers in limiting the extent of taxation in municipal corporations does not prevent the legislature from again exercising its power by enlarging the authority to tax. *Id.*

The legislature may authorize a municipal corporation to pay claims invalid in law, but equitable and just in themselves. *Id.*

The words "taxation" and "assessment" do not have the same signification. The legislature can have nothing to do with the mode of enforcing the taxing power, represented by the word "assessment," except while working under this provision of the constitution. *Taylor vs. Palmer*, 31 Cal. 240.

and until his successor is elected and qualified. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

Qualifications.

SEC. 3. No person shall be eligible to the office of governor (except at the first election) who has not been a citizen of the United States, and a resident of this State, two years next preceding the election, and attained the age of twenty-five years at the time of said election.

Returns of election.

SEC. 4. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the assembly, who shall, during the first week of the session, open and publish them in presence of both houses of the legislature. The person having the highest number of votes shall be governor; but in case any two or more have an equal and the highest number of votes, the legislature shall, by joint vote of both houses, choose one of said persons, so having an equal and the highest number of votes, for governor.

xxxvi. *Commander-in-chief.*

SEC. 5. The governor shall be commander-in-chief of the militia, the army and navy of this State.

Executive business.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

Execution of laws.

SEC. 7. He shall see that the laws are faithfully executed.

Filling vacancies.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislature, or at the next election by the people.^(b)

Special sessions of legislature.

SEC. 9. He may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

xxxvii. *Executive messages.*

SEC. 10. He shall communicate by message, to the legislature, at every session, the condition of the state, and recommend such matters as he shall deem expedient.

(a) Original section:

SEC. 2. The governor shall be elected by the qualified electors, at the time and places of voting for members of assembly, and shall hold his office two years from the time of his installation and until his successor shall be qualified.

(b) This power in the governor is limited by the period when the people or the legislature can elect or appoint; on the arrival of which his power ceases. *Cassidy vs. Fitch*, 1 Cal. 519.

A constitutional officer cannot be divested of his office otherwise than as prescribed by the constitution. Doubt expressed as to whether the absence of a judge from the state is such a vacancy as can be supplied by the executive. *People vs. Wells*, 2 Cal. 198.

Where there is a failure to fill an elective office on the expiration of a term, though the incumbent holds until his successor is appointed and qualifies, the office becomes de jure vacant, and can be filled by the governor. *Langdon vs. Reid*, 5 Cal. 288.

As to what constitutes a vacancy, consult *Ryder vs. Mizner*, 7 Cal. 519, and *Aylett vs. Langdon*, 8 Cal. 1.

A person appointed by the governor to fill a vacancy in the office of superintendent of immigration for San Francisco is entitled to hold until a new appointment by the governor and senate. The governor cannot, after the commission is issued, revoke it; and the appointee cannot be disturbed until the office is filled pursuant to statute. *Wetherbee vs. Cazneau*, 20 Cal. 503.

This section applies only to those cases of vacancies for filling which no other mode is provided "by the constitution and laws," and has no application to vacancies the mode of filling which is provided by the law of April 28, 1851, concerning officers. *Id.*

When there is a person in possession of an office, who is expressly authorized by statute or constitution to discharge its duties temporarily, till the electing or appointing power can regularly act, there is no vacancy within the meaning of the constitutional clause. *People vs. Tilton*, 37 Cal. 614.

Adjournment of legislature.

SEC. 11. In case of a disagreement between the two houses, with respect to the time of adjournment, the governor shall have power to adjourn the legislature to such time as he may think proper; provided it be not beyond the time fixed for the meeting of the next legislature.

Disabilities.

SEC. 12. No person shall, while holding any office under the United States, or this state, exercise the office of governor, except as hereinafter expressly provided.

Reprieves and pardons.

SEC. 13. The governor shall have the power to grant reprieves and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

Seal of state.

SEC. 14. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called "The Great Seal of the State of California."

xxxviii. *Grants and commissions.*

SEC. 15. All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Lieutenant-governor.

SEC. 16. A lieutenant-governor shall be elected at the same time and places, and in the same manner as the governor; and his term of office, and his qualifications of eligibility, shall also be the same. He shall be president of the senate, but shall only have a casting vote therein. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy be filled or the disability shall cease.

When duties of governor to devolve on lieutenant-governor.

SEC. 17. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease.^(a) But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of the military force of the state.

(a) When the constitution clearly enumerates the events that shall constitute a vacancy in a particular office (as it is held to do here in regard to the office of governor) all other causes of vacancy are excluded. *McLony vs. Whitman*, 10 Cal. 38.

Other state officers.

SEC. 18. A secretary of state, a controller, a treasurer, an attorney-general, and a surveyor-general, shall be elected at the same time and places, and in the same manner as the governor and lieutenant-governor, and whose term of office shall be the same as the governor.^(a) [*Amendment, proposed 1861; ratified 3d September, 1862.*^(b)]

Duties of secretary of state.

SEC. 19. The secretary of state shall keep a fair record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as may be assigned him by law; and in order that no inconvenience may result to the public service, from the taking effect of the amendments proposed to said Article Five by the legislature of eighteen hundred and sixty-one, no officer shall be superseded or suspended thereby, until the election and qualification of the several officers provided for in said amendments. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)]

xxxix. *Election of state officers.*

SEC. 20. The controller, treasurer, attorney-general, and surveyor-general, shall be chosen by joint vote of the two houses of the legislature, at their first session under this constitution, and thereafter shall be elected at the same time and places, and in the same manner as the governor and lieutenant-governor.

Compensation.

SEC. 21. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, and surveyor-general, shall each, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive for his own use any fees for the performance of his official duties.^(d)

ARTICLE VI.

JUDICIAL DEPARTMENT.

xl. *Judicial power.*

SECTION 1. The judicial power of this state shall be vested in a supreme court, in district courts, in county courts, in probate courts, and in justices of the peace, and in such recorders and other inferior courts as the legislature may

(a) The constitutional policy is that all elective officers connected with the executive departments shall be elected biennially at the same time and place and in the same manner. An appointment of a controller by the governor before this election cannot defeat this policy, nor deprive the people of their right to fill the office of controller at such election. *Brooks vs. Melony*, 15 Cal. 58.

(b) Original section:

SEC. 18. A secretary of state, a controller, a treasurer, an attorney-general, and surveyor-general, shall be chosen in the manner provided in this constitution; and the term of office, and eligibility of each, shall be the same as are prescribed by the governor and lieutenant-governor.

(c) Original section:

SEC. 19. The secretary of state shall be appointed by the governor, by and with the advice and consent of the senate. He shall keep a fair record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature; and shall perform such other duties as shall be assigned him by law.

(d) The constitution is silent with respect to the duties to be performed by the attorney general, secretary of state, controller and treasurer, and in assigning their duties the legislature has a wide discretion; but a limitation on this discretion is implied from the nature of these offices. *Love vs. Baehr*, 47 Cal. 364.

establish in any incorporated city or town.^(a) [*Amendment, proposed 1861; ratified 3d September, 1862.*^(b)

Supreme court.

SEC. 2. The supreme court shall consist of a chief justice and four associate justices. The presence of three justices shall be necessary for the transaction of business, excepting such business as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce a judgment. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)

Election of supreme judges.

SEC. 3. The justices of the supreme court shall be elected by the qualified electors of the state at special elections to be provided by law, at which elections no officer other than judicial shall be elected, except a superintendent of public instruction. The first election for justices of the supreme court shall be held in the year eighteen hundred and sixty-three. The justices shall hold their offices for the term of ten years from the first day of January next after their election, except those elected at the first election, who, at their first meeting, shall so classify themselves by lot, that one justice shall go out of office every two years. The justice having the shortest term to serve shall be the chief justice. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(d)

Jurisdiction of supreme court.

SEC. 4. The supreme court shall have appellate jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in all cases arising in the probate courts; and also, in all criminal cases amounting to felony, on questions of law alone. The court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also, all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court, or any county court, in the state, or before any judge of said courts. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(e)

(a) Each branch of the judicial department has its functions assigned by the constitution, and is beyond the control of either of the other departments of the government. Parsons vs. Inolunne County Water Company, 5 Cal. 43.

The legislature cannot confer on one court the functions and powers which the constitution has conferred on another; consequently a law vesting justices of the peace with jurisdiction where the amount in controversy amounts to that over which district courts have jurisdiction is unconstitutional. Zander vs. Coe, 5 Cal. 230.

Under the power "to establish such municipal and other inferior courts as may be necessary," the courts thus created could only be of inferior, limited and special jurisdiction. The old superior court of San Francisco could, therefore, not be vested with jurisdiction so as to let its powers run beyond its territory. Meyer vs. Haskin, 6 Cal. 582.

The purpose and effect of the amendment of Article VI is not to suspend the administration of any portion of the laws of the state, but to provide a judiciary system which will go into operation when the necessary officers shall be elected pursuant to laws to be hereafter enacted, and to continue the former judiciary system in force until the new one shall be in a condition to exercise its functions. The old provisions cease to have effect from time to time as the substituted provisions commence to operate. Ex parte Carlos Olivarez, 21 Cal. 415.

The term "municipal courts" has a legal meaning and includes mayors' and recorders' courts. Uridas vs. Morrill, 22 Cal. 473.

The constitution not having defined the jurisdiction of the municipal courts authorized to be established, it is left to be regulated by the legislature under its general powers. Id.

The municipal criminal court of San Francisco is a constitutional court. People vs. Myland, 41 Cal. 129.

(b) Original section:

SECTION 1. The judicial power of this state shall be vested in a supreme court, in district courts, in county courts, and in justices of the peace. The legislature may also establish such municipal and other inferior courts as may be deemed necessary.

(c) Original section:

SEC. 2. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum.

(d) Original section:

SEC. 3. The justices of the supreme court shall be elected at the general election, by the qualified electors of the state, and shall hold their office for the term of six years from the first day of January next after their election; provided that the legislature shall, at its first meeting, elect a chief justice and two associate justices of the supreme court, by joint vote of both houses, and so classify them that one shall go out of office every two years. After the first election, the senior justice in commission shall be the chief justice.

(e) Original section:

SEC. 4. The supreme court shall have appellate jurisdiction in all cases when the matter in dispute exceeds two hundred dollars, when the legality of any tax, toll, or impost, or municipal fine is in question, and in all criminal cases amounting to felony or questions of law

xli. Judicial districts—District judges.

SEC. 5. The state shall be divided by the legislature of eighteen hundred and sixty-three, into fourteen judicial districts, subject to such alteration from time to time, by a two thirds vote of all the members elected to both houses, as the public good may require; in each of which there shall be a district court, and for each of which a district judge shall be elected by the qualified electors of the district, at the special judicial elections to be held as provided for the election of justices of the supreme court by section three of this article. The district judges shall hold their offices for the term of six years from the first day of January next after their election. The legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the state for upwards of thirty consecutive days shall be deemed to have forfeited his office. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

alone. And the said court, and each of the justices thereof, as well as all district and county judges, shall have power to issue writs of habeas corpus at the instance of any person held in actual custody. They shall also have power to issue all other writs and process necessary to the exercise of their appellate jurisdiction, and shall be conservators of the peace throughout the state.

The supreme court being created by the constitution, and its powers being therein defined, the jurisdiction therein conferred must be taken as exclusive; hence, under the original section it was held that it had no original jurisdiction, except in cases of habeas corpus, and could not issue a quo warranto. Attorney-General *ex parte*, 1 Cal. 85.

Nor could it issue a certiorari. Warner vs. Hall, 1 Cal. 90.

But it could exercise its appellate powers by means of mandamus, and it seems, of certiorari, &c. People vs. Turner, 1 Cal. 143; White vs. Lighthall, 1 Cal. 347; see Cowell vs. Buckelew, 14 Cal. 640.

No appeal lay from the judgment of a district court on an appeal from an order of the court of sessions upon an application for a ferry license. 2 Cal. 133.

Held that the supreme court had power to issue a writ of error to a county court, where the supreme court had jurisdiction of the subject-matter, and there was no express provision by law by which the case could be brought up. Adams & Co. vs. Town, 3 Cal. 247.

This court has no appellate jurisdiction in cases of misdemeanor or crimes of a less degree than felony, and no jurisdiction can be conferred by the legislature. People vs. Applegate, 5 Cal. 295; People vs. Shear, 7 Cal. 1-9; People vs. Vick, 7 Cal. 165.

The supreme court has no power to naturalize. *Ex parte* Frank Knowles, 5 Cal. 3-0.

A writ of error will lie only in cases where no appeal is given by statute. Where an appeal is given, that remedy is exclusive. Haight vs. Gay, 8 Cal. 297.

The supreme court possesses appellate jurisdiction in all cases, except as provided in the constitution; it consequently has appellate jurisdiction in divorce cases. Conant vs. Conant, 10 Cal. 249.

Jurisdiction on appeal will not be entertained where the record (in a suit for damages) fails to show that the matter in dispute exceeds \$200. Doyle vs. Seawall, 12 Cal. 280.

The words "matter in dispute" mean the subject of litigation. Costs form no part of it. Dunny vs. Guindon, 13 Cal. 28; Votan vs. Reese, 20 Cal. 89.

Where suit was brought for \$200 and defendant pleaded a set-off of \$125: Held, that the matter in dispute did not exceed \$200. Simmons vs. Brainard, 14 Cal. 278.

Where there was a judgment for plaintiff against defendant for \$600, and defendant, having a judgment against plaintiff for \$110 in another court, moved to set it off, which was denied: Held, on appeal of the motion that the matter in dispute did not exceed \$200. Crandell vs. Blen, 15 Cal. 406.

Some offenses may be punished either as felonies or misdemeanors, and in such cases the punishment inflicted must determine the grade of the offense. If the punishment is a fine for a misdemeanor, though it exceeds \$200, the supreme court has no appellate jurisdiction. People vs. Cornell, 16 Cal. 187.

The half pilotage allowed by the twenty-third section of the act of March 29, 1856, relating to pilots, is not

a "toll" within the meaning of the constitution. Harrison vs. Green, 18 Cal. 94.

Where the matter in dispute does not exceed the constitutional sum, the supreme court has no appellate jurisdiction, though the demand is secured by a mechanic's lien or a mortgage, of which a foreclosure is sought in the same case. Poland vs. Carrigan, 20 Cal. 174.

The supreme court could not, under the original article, issue the writ of certiorari except in aid of its appellate jurisdiction; consequently the provision of section 456 of the practice act held not to apply to it. Milliken vs. Huber, 21 Cal. 169.

Where in an action of forcible entry and detainer, plaintiff had judgment in a justice's court for \$-0 damages and \$20 fine and costs, from which defendant appealed to the county court, where the action was dismissed and afterwards a new trial granted: Held that it was doubtful whether the supreme court had jurisdiction of an appeal from the order. Quinn vs. Kenyon, 22 Cal. 82.

Under the constitution as amended, the supreme court has original jurisdiction to issue writs of mandamus, certiorari, prohibition and habeas corpus. Tyler vs. Houghton, 25 Cal. 26.

A fine imposed by the county court for wrongfully demanding and collecting toll for the privilege of passing over a road, is not a "municipal fine" within the meaning of the constitution. People vs. Johnson, 30 Cal. 98.

The words "cases at law" refer to civil as distinguished from criminal cases. People vs. Johnson, 30 Cal. 98.

The supreme court has constitutional jurisdiction of an appeal from the county court in a contested election case. Knowles vs. Yeates, 31 Cal. 82; Day vs. Jones, 31 Cal. 261.

(a) Original section:

SEC. 5. The state shall be divided by the first legislature into a convenient number of districts, subject to such alteration from time to time as the public good may require, for each of which a district judge shall be appointed by the joint vote of the legislature at its first meeting, who shall hold his office for two years from the first day of January next after his election; after which said judges shall be elected by the qualified electors of their respective districts, at the general election, and shall hold their office for the term of six years.

An act of the legislature, by which a district judge of one district is empowered to hold a district court in another district, is not unconstitutional. People vs. McCauley, 1 Cal. 379.

An election for district judge at the general election of 1858, when the then incumbent's office was not to expire until 1861: Held unauthorized. Brodie vs. Weller, 11 Cal. 77.

When a district judge is elected by the people on the occasion of a vacancy, he is elected for a full term, and this, though the proclamation of the governor is for the unexpired term. The legislature can direct the time and prescribe the manner of electing district judges, but cannot change the tenure of the office. People vs. Burbank, 12 Cal. 378.

This provision does not restrict the number of judicial districts to fourteen; it means that the legislature may alter their number as well as their extent. People vs. Sassovich, 29 Cal. 480.

Jurisdiction of district courts.

SEC. 6. The district courts shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; and also in all criminal cases not otherwise provided for. The district courts and their judges shall have power to issue writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

County courts and county judges—Probate judge in San Francisco.

SEC. 7. There shall be in each of the organized counties of the state a county court, for each of which a county judge shall be elected by the qualified electors of the county, at the special judicial elections to be held, as provided for the election of justices of the supreme court by section three of this article. The county judges shall hold their offices for the term of four years from the first day of January next after their election. Said courts shall also have power to issue naturalization papers.^(b) In the city and county of San Francisco the legislature may separate the office of probate judge from that of county judge, and may provide for the election of a probate judge, who shall hold his office for the term of four years. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)]

Jurisdiction of county courts.

SEC. 8. The county courts shall have original jurisdiction of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and of all such special cases and proceedings as are not otherwise provided for; and also, such criminal jurisdiction as the legislature may prescribe; they shall also have appellate jurisdiction in all cases arising in courts held by justices of the peace and recorders, and in such inferior courts as may be established, in pursuance of section one of this article, in their respective counties. The county judges shall also hold in their several counties probate courts, and perform such duties as probate judges as may be prescribed by law.

(a) Original section:

SEC. 6. The district courts shall have original jurisdiction, in law and equity, in all civil cases where the amount in dispute exceeds two hundred dollars, exclusive of interest. In all criminal cases not otherwise provided for, and in all issues of fact joined in the probate courts, their jurisdiction shall be unlimited.

The jurisdiction of district courts is confirmed and defined by the constitution, and no statute can deprive them of their powers. Consequently they have jurisdiction of mining claims if the amount in controversy is sufficient, though the legislature says that justices of the peace shall have jurisdiction of mining claims. *Hicks vs. Bell*, 3 Cal. 219; *Freeman vs. Powers*, 7 Cal. 104.

When the principal sum sued for is less than \$200, the district court has not jurisdiction. *Arnold vs. Van Brunt*, 4 Cal. 89.

District courts have no appellate jurisdiction. *Reed vs. McCormick*, 4 Cal. 342.

District courts may render judgment for less than \$200. *Jackson vs. Whartenby*, 5 Cal. 94.

A law vesting justices of the peace with jurisdiction, where the amount in dispute exceeds the sum specified in the constitution, is void. *Zander vs. Coe*, 5 Cal. 230.

The district judge while sitting in an equity case is possessed of all the powers of a court of chancery. *Sanford vs. Head*, 5 Cal. 297.

The district courts have "original jurisdiction in all cases in equity," and a statute depriving them of that jurisdiction or transferring it to any other court is unconstitutional and void. *Willis vs. Farley*, 24 Cal. 490.

The district courts have original jurisdiction to issue writs of mandamus, certiorari, prohibition and habeas corpus, notwithstanding the supreme court has like jurisdiction. *Perry vs. Ames*, 26 Cal. 372.

The district courts have jurisdiction of all actions to

recover damages for trespass upon lands, regardless of the amount of damages claimed. *Holman vs. Taylor*, 31 Cal. 338.

Since the amendment of this section district courts have no jurisdiction to try issues framed in probate courts; and an act attempting to confer such jurisdiction is void. *Matter of Will of Bowen*, 34 Cal. 682.

It is the intention of this clause to give the district courts exclusive jurisdiction in those cases only in which the right to the possession is involved. *Pollock vs. Cummings*, 38 Cal. 683.

The constitutional jurisdiction of the district courts in "equity cases" does not prevent the legislature from prescribing the procedure by which such jurisdiction is to be exercised, unless the regulations substantially impair the constitutional power of the court or practically defeat its exercise. *Ex parte Harker*, 49 Cal. 453.

(b) In regard to this section, it is to be noted that the clause relating to naturalization papers was not a part of the section as proposed by the legislature of 1861 (see 1861, 604). It will further be noted that the clause relating to the probate judgeship in the city and county of San Francisco, formed a part of the eighth section and not of the seventh in the amendments proposed in 1861. The legislature of 1862 (see 1862, 584) changed and declared adopted the amendments as above given in the text. It will, however, be further noted that the amendments in regard to the judicial department are to the entire Article VI, and not to the separate sections.

(c) The seventh section of the original Article was: SEC. 7. The legislature shall provide for the election, by the people, of a clerk of the supreme court, and county clerks, district attorneys, sheriffs, coroners, and other necessary officers; and shall fix by law their duties and compensation. County clerks shall be, ex officio, clerks of the district courts in and for their respective counties.

The county courts and their judges shall also have power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

Justices of the peace—Proviso.

SEC. 9. The legislature shall determine the number of justices of the peace to be elected in each city and township of the state, and fix by law their powers, duties, and responsibilities; provided, such powers shall not in any case trench upon the jurisdiction of the several courts of record. The supreme court, the district courts, county courts, the probate courts, and such other courts as the legislature shall prescribe, shall be courts of record. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(b)]

xlii. *Jurisdiction of recorders' and other inferior municipal courts.*

SEC. 10. The legislature shall fix by law the jurisdiction of any recorder's, or

(a) Eighth section of original article:

SEC. 8. There shall be elected in each of the organized counties of this state, one county judge, who shall hold his office for four years. He shall hold the county court and perform the duties of surrogate or probate judge. The county judge, with two justices of the peace, to be designated according to law, shall hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and he shall perform such other duties as shall be required by law.

The term "special cases" does not include any class of cases for which courts of general jurisdiction have always supplied a remedy; it must be confined to such new cases as are the creation of statutes. *Parsons vs. Tuolumne County Water Company*, 5 Cal. 43.

Held, under the original section, that justices of the peace were not to be regarded as supernumeraries to the court of sessions, but necessary officers, who had to begin with and continue through a trial. *People vs. Ah Chung*, 5 Cal. 103.

Held, under the ninth section of the original article, that the county court had no jurisdiction to enforce a mechanic's lien where the amount in controversy exceeded \$200. *Brock vs. Bruce*, 5 Cal. 279.

The constitution cannot be construed to confer exclusive original jurisdiction in all special cases upon county courts. Justices' courts have jurisdiction in cases of forcible entry. *O'Callaghan vs. Booth*, 6 Cal. 63; *Small vs. Gwinn*, 6 Cal. 447.

Insolvency cases are "special cases;" and it was an exercise of legitimate power in the legislature to confer jurisdiction in such cases upon both county and district courts. *Harper vs. Freelon*, 6 Cal. 76.

The grant of authority to county judges to award injunctions in cases brought in district courts is not trenching upon the limits of jurisdiction of any of the courts; it is a mere power to issue process auxiliary to the proper jurisdiction of the district courts. *Thompson vs. Williams*, 6 Cal. 88.

The act of March 27, 1850, conferring upon the county court the power of incorporating towns, was unconstitutional. Legislative functions cannot be exercised by the judiciary. *People vs. Nevada*, 6 Cal. 143.

Under the act to reorganize San Mateo County (1857, 222) an election was held, and Fox was elected county judge. There was no proclamation of the governor for the election. At the general election in 1858 an election was held pursuant to proclamation, and Templeton was elected to the same office; Held, that Fox was entitled to the office for a term of four years, commencing from the time of his assumption of the office. *Fox vs. Templeton*, 12 Cal. 394.

The act giving jurisdiction over the subject of contested elections to the county judge is constitutional; it is one of the "special cases" provided for. *Saunders vs. Haynes*, 13 Cal. 145.

The county judge may grant an injunction in cases in the district courts, but he cannot appoint a receiver; at least not as a thing distinct from the injunction. *Ruthrauff vs. Kresz*, 13 Cal. 639.

The legislature may fix the commencement of the term and also the time of election of a county judge, but an act limiting the term to anything less than four years is void pro tanto. *Westbrook vs. Rosborough*, 14 Cal. 180.

Where an incumbent resigns before the expiration of his term, there is a vacancy to be filled by the governor; and his appointees hold until the next general election, and until his successor qualifies. Id.

An election to fill such a vacancy is a special elec-

tion, and the governor's proclamation is essential to its validity. Id.

The statute giving to county courts jurisdiction in proceedings by mandamus is not unconstitutional. *Jacks vs. Day*, 15 Cal. 91.

The proceedings before the corporate authorities of the town, or the county court, provided for by the act of January 24, 1860, regulating the mode of settling claims to lots in town sites situated on public lands in Humboldt County, is a "special case" within the meaning of the constitution. *Ricks vs. Reed*, 19 Cal. 551.

A proceeding to enforce a mechanic's lien under the mechanic's lien law of 1861 is a "special case" of which the legislature might properly give jurisdiction to the county court under the constitution. *McNiel vs. Borland*, 23 Cal. 144.

The statute proceeding for contesting an election, as provided for in the act of 1850, was a "special case." *Dorsey vs. Barry*, 24 Cal. 449.

The grant to the county court of jurisdiction to prevent or abate nuisances, does not deprive the district courts of concurrent jurisdiction under their equity powers. *Courtwright vs. Bear River & Auburn W. & M. Co.*, 30 Cal. 573.

The constitution does not confer on the probate court jurisdiction of all matters relating to the estates of deceased persons, but of such matters only as the statute directs it to exercise jurisdiction over. *Bush vs. Lindsey*, 44 Cal. 121.

The constitution has left to the legislature to determine whether jurisdiction over any special case shall be vested in the county court or some other court. *Matter of Marks*, 45 Cal. 199.

Writs of mandate are not "special cases" within the meaning of the constitution. *People vs. Kern County*, 45 Cal. 679.

An act attempting to confer power on the county court to issue writs of mandate is unconstitutional. *People vs. Kern County*, 45 Cal. 679.

Proceedings for the condemnation of water to supply cities with pure water, and the right of way to conduct it, are "special cases." *Spencer Creek Water Co. vs. Vallejo*, 45 Cal. 70.

The legislature cannot confer jurisdiction of "special cases" upon the county judge, but only upon one of the courts mentioned in the constitution. *Spencer Creek Water Company vs. Vallejo*, 48 Cal. 70.

(b) Ninth section of original Article:

SEC. 9. The county courts shall have such jurisdiction, in cases arising in justices' courts, and in special cases, as the legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

The jurisdiction of justices of the peace is limited to cases in which the value of the thing in controversy does not exceed the sum specified, except in proceedings under the statute concerning forcible entry. When the thing in dispute, though a mining claim, is worth more than that sum, the justice has no jurisdiction. *Freeman vs. Powers*, 7 Cal. 104.

Under the ninth section of the original Article: Held, that the county court had the sole appellate jurisdiction in all cases, civil and criminal, arising in justices' courts; and that the court of sessions had no appellate jurisdiction. *People vs. Fowler*, 9 Cal. 85.

The act of April 27, 1863, "concerning the unlawful holding over of lands, tenements and other possessions," and attempting to vest jurisdiction of holding-over cases in justices of the peace, was unconstitutional. *Caulfield vs. Stevens*, 28 Cal. 118.

other inferior municipal court, which may be established in pursuance of section one of this article, and shall fix by law the powers, duties and responsibilities of the judges thereof. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

Clerk of supreme court—County officers.

SEC. 11. The legislature shall provide for the election of a clerk of the supreme court, county clerks, district attorneys, sheriffs and other necessary officers, and shall fix by law their duties and compensation. County clerks shall be ex officio clerks of the courts of record in and for their respective counties.^(b) The legislature may also provide for the appointment by the several district courts of one or more commissioners in the several counties of their respective districts, with authority to perform chamber business of the judges of the district courts and county courts, and also to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)]

Terms of courts.

SEC. 12. The times and places of holding the terms of the several courts of record shall be provided for by law. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(d)]

Fees and perquisites.

SEC. 13. No judicial officer, except justices of the peace, recorders and commissioners, shall receive to his own use any fees or perquisites of office. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(e)]

Publication of opinions of supreme court.

SEC. 14. The legislature shall provide for the speedy publication of such opinions of the supreme court as it may deem expedient; and all opinions shall be free for publication by any person. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(f)]

xliii. *Compensation of judges.*

SEC. 15. The justices of the supreme court, district judges, and county judges, shall severally, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected: provided, that county judges shall be paid out of the county treasury of their respective counties. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(g)]

(a) Tenth section of original Article:

SEC. 10. The times and places of holding the terms of the supreme court, and the general and special terms of the district courts within the several districts, shall be provided for by law.

(b) A county clerk may issue process and attest proceedings of the courts of which he is ex officio clerk over his signature as county clerk, and leave to the title of the proceedings or contents of the instruments the identification of the courts to which they belong. *Touchard vs. Crow*, 20 Cal. 150.

(c) Eleventh section of original Article:

SEC. 11. No judicial officer, except a justice of the peace, shall receive, to his own use, any fees or perquisites of office.

Under the eleventh section of the original Article: Held, that when the constitution exempted justices of the peace from the operation of the restraint in regard to fees and perquisites, it meant to exempt those also, by whatever name called, who were intrusted with the duties assigned to justices, and that consequently the recorder of the city of Sacramento was entitled to collect fees. *Curtis vs. Sacramento*, 13 Cal. 290.

(d) Twelfth section of original Article:

SEC. 12. The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person.

The constitution does not require that the district

courts shall be held at the county seats. *Upham vs. Sutter County*, 8 Cal. 378.

The constitution does not prohibit the legislature from authorizing a judgment to be entered in vacation. *People vs. Jones*, 20 Cal. 50.

(e) Thirteenth section of original Article:

SEC. 13. Tribunals for conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in the presence of such tribunal, in such cases as shall be prescribed by law.

Since the occupation of California by the Americans, the Mexican proceeding of conciliation has been deemed a useless formality. *Von Schmidt vs. Huntington*, 1 Cal. 55.

(f) Fourteenth section of original Article:

SEC. 14. The legislature shall determine the number of justices of the peace, to be elected in each county, city, town, and incorporated village of the state, and fix by law their powers, duties and responsibilities. It shall also determine in what cases appeals may be made from justices' courts to the county court.

(g) Original section:

SEC. 15. The justices of the supreme court and judges of the district courts shall severally, at stated times during their continuance in office, receive for their services a compensation to be paid out of the treasury,

Disabilities of judges.

SEC. 16. The justices of the supreme court, and the district judges, and the county judges, shall be ineligible to any other office than a judicial office, during the term for which they shall have been elected. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(a)]

Charge to juries.

SEC. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(b)]

Style of process.

SEC. 18. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(c)]

Effect of amendments.

SEC. 19. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article Six by the legislature of eighteen hundred and sixty-one, no officer shall be superseded thereby, nor shall the organization of the several courts be changed thereby, until the election and qualification of the several officers provided for in said amendments. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(d)]

ARTICLE VII.

MILITIA.

xliv. Organization and discipline.

SECTION 1. The legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States.

Officers.

SEC. 2. Officers of the militia shall be elected or appointed in such a manner as the legislature shall from time to time direct, and shall be commissioned by the governor.

Governor to call out.

SEC. 3. The governor shall have power to call forth the militia, to execute the laws of the State, to suppress insurrections, and repel invasions.

which shall not be increased or diminished during the term for which they shall have been elected. The county judges shall also severally, at stated times, receive for their services a compensation to be paid out of the county treasury of their respective counties, which shall not be increased or diminished during the term for which they shall have been elected.

The provisions respecting the salaries of district judges do not exempt those officers from the necessity of an appropriation for that purpose by the legislature. *Myers vs. English*, 9 Cal. 341.

(a) Original section.

SEC. 16. The justices of the supreme court and district judges shall be ineligible to any other office during the term for which they shall have been elected.

(b) The seventeenth section of the original Article was in the same words.

The question of fraudulent intent is a question of fact; but where the law declares certain facts conclusive evidence of fraud, a verdict against such conclusion will be set aside. *Billings vs. Billings*, 2 Cal. 107.

It is error for a court to charge a jury as to a question

of fact or as to the weight of evidence. *Battersby vs. Abbott*, 9 Cal. 565.

This provision is violated whenever a judge so instructs as to force the jury to a particular conclusion upon the whole or any part of the case, or to take away their exclusive right to weigh the evidence and determine the facts. And such an error would prima facie be sufficient cause for reversing a judgment; but no more importance is to be attached to an error of this kind than any other. *People vs. Ybarra*, 17 Cal. 166.

The right of a judge to state the evidence includes the right to state that there is no evidence as to particular facts. *People vs. Dick*, 34 Cal. 663.

(c) Original section:

SEC. 18. The style of all process shall be, "The People of the State of California;" all the prosecutions shall be conducted in the name and by the authority of the same.

(d) The jurisdiction of the old courts continued unimpaired until the organization of the new courts by which they were to be superseded. *Gilliss vs. Barnett*, 38 Cal. 393.

ARTICLE VIII.

STATE DEBTS.

xliv. *Restrictions on legislative power.*

The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly, or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due, and also pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specified object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.^(a)

ARTICLE IX.

EDUCATION.

xlvi. *Superintendent of public instruction.*

SECTION 1. A superintendent of public instruction shall, at the special election for judicial officers to be held in the year eighteen hundred and sixty-three, and every four years thereafter at such special elections, be elected by the qualified voters of the State, and shall enter upon the duties of his office on the first day of December next after his election. [*Amendment, proposed 1861; ratified 3d September, 1862.*^(b)]

Duties of legislature—School fund.

SEC. 2. The legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all land that may be granted by the United States to this State for the

(a) The meaning of this section is too plain to permit the courts to resort to rules of construction to alter it. Hence, the act of April 8, 1855, providing for the construction of a wagon road to the Sierra Nevada, and authorizing the board of commissioners to contract for the same at a price not exceeding \$300,000, while the existing indebtedness of the state exceeded that sum (said act containing no provision for submission of the question to the people), was void. *People vs. Johnson*, 6 Cal. 499.

The act of April 18, 1856, providing for the erection of a state capitol at a cost not to exceed \$300,000, held void. *Nongues vs. Douglass*, 7 Cal. 65.

This article is an express restriction upon the powers of the legislature, and there is no power in the judiciary to set it aside, whatever inconvenience may result from a legitimate application of the provision. *Id.*

All debts contracted in violation of this article are void, and the legislature has no power to levy a tax or appropriate money for the payment thereof. *Id.*

This article only applies to the state as a corporation, and does not prevent the state authorizing counties or municipal corporations to create debts, when the debt of the state itself is up to the constitutional limits. *Pattison vs. Yuba County*, 13 Cal. 175.

The act of March 21, 1856, creating a board of state prison commissioners and defining their duties, does not violate this article. It does not create a debt or

liability against the state. Though under the contract with Estill provided for the payment to him of \$10,000 per month, there could be no debt on the part of the state until the services were rendered. *California vs. McCauley*, 15 Cal. 429.

Taxes are not "debts" within the meaning of this article. *Perry vs. Washburn*, 20 Cal. 318.

The evident intention was to impose limitations upon the general power of the legislature to create debts, leaving it free, however, from such restrictions in great emergencies caused by war, invasion or insurrection. *Franklin vs. State Board of Examiners*, 23 Cal. 173.

A law which appropriates a sum of money for the future, and directs certain payments to be made out of the same at designated periods from year to year thereafter, and also imposes a special tax and sets apart the proceeds thereof as a fund to meet the sums to be paid as they become payable, does not create a debt within the meaning of the prohibitory clause of the constitution. *People vs. Pacheco*, 27 Cal. 175.

(b) Original section:

SECTION 1. The legislature shall provide for the election, by the people, of a superintendent of public instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the legislature may direct.

support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress distributing the proceeds of the public lands among the several states of the Union, approved A.D. 1841; and all estates of deceased persons who may have died without leaving a will, or heir, and also such per cent. as may be granted by congress on the sale of lands in this state, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.^(a)

Schools.

SEC. 3. The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year; and any school district neglecting to keep and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

University.

SEC. 4. The legislature shall take measures for the protection, improvement, or other disposition of such lands as may have been, or may hereafter be reserved or granted by the United States, or any person or persons, to the state for the use of a university; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said university, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the legislature as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

ARTICLE X.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

xlvii. Proposal of amendments—Submission to people.

SECTION 1. Any amendment or amendments to this constitution, may be proposed in the senate or assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution.

(a) The provision of the act of April 22, 1861, requiring that the proceeds of sales of the sixteenth and thirty-sixth sections shall constitute a state fund instead of being applied for the benefit of the townships in which the bonds are situated, is constitutional and valid. *Wyman vs. Bauvard*, 22 Cal. 524.

The school land act of April 26, 1858, is not a grant of the interest money to the several townships, but

merely a provision as to the manner in which a certain fund shall be appropriated, and subject therefore to the future control of the legislature. *Id.*

This clause includes, as "means," any fund arising from taxation for school purposes, levied under general laws passed for that purpose; so that an act diverting such fund to any other than school purposes is unconstitutional. *Crosby vs. Lyon*, 37 Cal. 242.

Convention.

SEC. 2. And if, at any time, two thirds of the senate and assembly shall think it necessary to revise or change this entire constitution, they shall recommend to the electors, at the next election for members of the legislature, to vote for or against a convention; and if it shall appear that a majority of the electors, voting at such election, have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature. The constitution that may have been agreed upon and adopted by such convention, shall be submitted to the people, at a special election, to be provided for by law, for their ratification or rejection; each voter shall express his opinion by depositing in the ballot-box a ticket, whereon shall be written or printed the words "For the new Constitution," or "Against the new Constitution." The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer and secretary of state, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election, be in favor of such new constitution, the executive of this state shall, by his proclamation, declare such new constitution to be the constitution of the State of California. [*Amendment, proposed 1855; ratified 4th November, 1856.*^(a)]

ARTICLE XI.

PROMISCUOUS PROVISIONS.

xlvi. Seat of government.

SECTION 1. The first session of the legislature shall be held at the Pueblo de San Jose; which place shall be the permanent seat of government, until removed by law: provided, however, that two thirds of all the members elected to each house of the legislature shall concur in the passage of such law.^(b)

Duelling.

SEC. 2. Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it; or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this constitution.

Official oath.

SEC. 3. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the State of California,

(a) Original section:

SEC. 2. And if, at any time, two thirds of the senate and assembly shall think it necessary to revise or change this entire constitution, they shall recommend to the electors, at the next election for members of the legislature, to vote for or against the convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention, to be holden

within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature.

(b) After the first removal, a majority of the legislature might at any time remove the capital; consequently the act of February 4, 1851, removing it to Vallejo, was constitutional. *Vernule vs. Bigler*, 5 Cal. 23.

and that I will faithfully discharge the duties of the office of ———, according to the best of my ability.”

And no other oath, declaration, or test, shall be required as qualification for any office or public trust.^(a)

County and town government.

SEC. 4. The legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State.^(b)

xlix. *County supervisors.*

SEC. 5. The legislature shall have power to provide for the election of a board of supervisors in each county; and these supervisors shall jointly and individually perform such duties as may be prescribed by law.^(c)

New offices and officers.

SEC. 6. All officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the legislature may direct.^(d)

Terms of office.

SEC. 7. When the duration of any office is not provided for by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office, not fixed by this constitution, ever exceed four years.^(e)

Fiscal year.

SEC. 8. The fiscal year shall commence on the first day of July.

Support of county and inferior officers.

SEC. 9. Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such restrictions and regulations as the legislature may prescribe.

1. *Credit of state.*

SEC. 10. The credit of the state shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation; nor shall the state directly or indirectly become a stockholder in any association or corporation.^(f)

Suits against state.

SEC. 11. Suits may be brought against the state in such a manner, in such courts, as shall be directed by law.

(a) An attorney at law is not a person holding an “office of public trust,” and may be required to file an affidavit of allegiance as prescribed by the act of April 25, 1863, as a condition to practicing before the courts. *Cohen vs. Wright*, 22 Cal. 293.

The terms “office” and “public trust” have relation only to those persons and duties that are of a public nature and do not apply to the case of an attorney at law. *Ex parte Yale*, 24 Cal. 487.

(b) This provision is to be considered directory, and the authority to determine what measure of uniformity is practicable must be left to the legislature. *People vs. Lake County*, 33 Cal. 487.

(c) This section must be regarded as a limitation on the Third Article of the constitution. From the necessity of the case, supervisors exercise judicial, legislative and executive powers in matters relating to the police and fiscal regulations of counties. *People vs. El Dorado County*, 8 Cal. 58.

(d) The constitution does not prohibit the legislature from conferring on a voluntary association of persons, who are not citizens, such as the board of fire underwriters of San Francisco, the power of electing a person to fill an office created by the legislature. *In re Bulger*, 45 Cal. 553.

When the constitution declares an office to be elective, it cannot be filled in any other mode; but when the office has been filled by election, the legislature may extend the term of the incumbent, provided the whole term does not exceed the constitutional limit. *Christy vs. Supervisors of Sacramento County*, 39 Cal. 3.

(e) The governor cannot remove from office a notary public duly appointed before his full term of office has expired. *Finlay vs. Jewett*, 6 Cal. 291.

This provision must be construed to deny the right of removal in those cases where the tenure is defined. *Id.*

A law which provides that an officer may be removed in a certain way or for a certain cause, does not restrain or limit the power of removal to the cause or manner indicated. The only way in which this power of removal can be limited is by first fixing the duration or term of office, and then providing the mode, if deemed necessary, by which the officer may be removed during the term. *People vs. Hill*, 7 Cal. 97.

This clause does not mean that an office created by the legislature shall cease to exist after four years; but that the term, fixed by the constituting authority and for which an incumbent holds by election or appointment, shall not extend beyond that limit. *People vs. Stratton*, 28 Cal. 382.

The commissioners of the funded debt of the city of San Francisco were not officers within the meaning of this section as their term was not limited to four years. *People vs. Middleton*, 28 Cal. 663.

(f) The clause prohibiting the state from giving or loaning its credit to or in aid of a corporation does not prohibit it from appropriating its funds in time of war to aid a corporation in the construction of a railroad to be used by the state for military purposes. *People vs. Pacheco*, 27 Cal. 175.

Marriages.

SEC. 12. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

Taxation.

SEC. 13. Taxation shall be equal and uniform throughout the state. All property in this state shall be taxed in proportion to its value, to be ascertained as directed by law; but assessors and collectors of town, county, and state taxes, shall be elected by the qualified electors of the district, county, or town, in which the property taxed for state, county, or town purposes is situated.^(a)

Separate property.

SEC. 14. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as to that

(a) This section applies only to direct taxation upon property, and does not prohibit the legislature from enacting license laws. It may require the payment by foreigners of a license fee for the privilege of working the gold mines in the state. *People vs. Naglee*, 1 Cal. 232.

The constitution provides that all property shall be taxed; but the quo modo is a matter of legislative control, and the statute must be steadily followed. *De Witt vs. Hays*, 2 Cal. 463.

It is not within the power of the legislature to exempt any species of property, however owned, from taxation. That a steamboat is taxed in New York is no ground why it should not be taxed in California, when within its limits. *Minturn vs. Hays*, 2 Cal. 590.

The first clause of this section does not operate as a limitation on the taxing power of the legislature, and apply to every species of taxation, but is to be taken as applying only to direct taxation on property as such. It does not require that all should be taxed alike. The power of the legislature to tax trades, professions and occupations, is a matter completely within its control and rests in its sound discretion. *People vs. Coleman*, 4 Cal. 46.

The interest of the occupant of a mining claim is property, and it is, within the power of the legislature, under the constitution, to tax such property. *State vs. Moore*, 12 Cal. 56.

This section applies only to that charge or imposition upon property which it is necessary to levy to raise funds to defray the expenses of the government of the state or of some county or town. It has no reference to special assessments for local improvements. For the expenses of such improvements it is competent for the legislature to provide, either by general taxation upon the property of all the inhabitants of the county or town in which they are made, or upon property adjacent thereto and specially benefited thereby. *Barnett vs. Sacramento*, 12 Cal. 76.

The legislature can impose a general tax upon all the property of the state, or a local tax upon the property of particular political subdivisions, as counties, cities and towns. The cases in which its power shall be exercised and the extent to which the taxation in a particular instance shall be carried, are matters exclusively within its own judgment, subject to the qualifications of equality and uniformity in the assessment. And, except as especially restricted, its power of appropriation of the moneys raised is coextensive with its power of taxation. *Blanding vs. Burr*, 13 Cal. 343.

Assessors and tax collectors are constitutional officers, but it is not necessary that every portion of the revenue pass through their hands. The legislature may authorize the tax-payer to pay his taxes directly into the treasury. *People vs. Squires*, 14 Cal. 12.

The foreign miners' license, though in some sense a tax, yet, probably, it is not so in the sense involved in the necessary duties of a tax collector. *Id.*

A sheriff, being ex officio tax collector of foreign miners' licenses, may be deprived of the office of tax collector by the legislature, before the expiration of his term. *Id.*

The act of May 3, 1852, providing for the appointment of a gauger for the port of San Francisco, is constitutional. It does not violate the provision that tax-

ation shall be equal and uniform, because the per centage allowed the gauger is not a tax within the meaning of the constitution. *Addison vs. Saulnier*, 19 Cal. 82.

The provision that taxation shall be equal and uniform is not violated by the revenue act of April 29, 1857, exempting church and school lands and lands of the United States from taxation. *High vs. Shoemaker*, 22 Cal. 363.

The words "taxation" and "taxes," as used in this section, do not apply to assessments levied upon city lots to pay for street improvements. *Emery vs. S. F. Gas Co.*, 28 Cal. 345.

The provisions of this section are limitations and not grants of power, but as limitations are, according to their terms, mandatory upon the legislature. *People vs. McCreery*, 34 Cal. 432.

The words "all property in this state" mean all property which is not public, and the legislature has no power to exempt any private property from taxation. *People vs. McCreery*, 34 Cal. 432.

An act providing for the assessment of railroad or other property by assessors other than those in whose district the property is situated is unconstitutional. *People vs. Placerville & S. V. R. R. Co.*, 34 Cal. 656.

The legislature may by law devolve the office and duties of tax collector upon the incumbent of any other elective office; but such law must precede the election of such officer, and his election must be by the qualified electors of the tax collector's district. *People vs. Kelsey*, 34 Cal. 470.

A statute exempting private property from taxation and all parts thereof relating to such exemption are unconstitutional and must be disregarded. *People vs. Gerke*, 35 Cal. 677.

An act having the effect of exempting the property of a railroad from the payment of a school tax regularly levied is unconstitutional. *Crosby vs. Lyon*, 32 Cal. 242.

An act taxing the property of a district for a local improvement, which exempts personal property from its operation is unconstitutional because not levied on all the property in the district. *People vs. Whyler*, 41 Cal. 351.

The word "property" as here used, includes not only visible and tangible property but also choses in action such as solvent debts secured by mortgage. *People vs. Eddy*, 43 Cal. 331; *Savings and Loan Society vs. Austin*, 46 Cal. 415.

Where an act authorizes a tax for road purposes upon property along a road in a portion of a county and providing that it should be assessed by the county assessor, and it was so assessed; held, that the assessment was void because not made by an assessor elected by the electors of the district. *Williams vs. Corcoran*, 46 Cal. 553.

The act creating a state board of equalization, which gave the board power to fix the rate of taxation for state purposes was not unconstitutional. *Savings and Loan Society vs. Austin*, 46 Cal. 415; overruled in *Houghton vs. Austin*, 47 Cal. 646.

The legislature cannot authorize a board of supervisors to remit a tax or part of a tax within a specified district. *Wilson vs. Supervisors of Sutter County*, 47 Cal. 91.

held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.^(a)

li. *Homesteads.*

SEC. 15. The legislature shall protect by law from forced sale, a certain portion of the homestead and other property of all heads of families.^(b)

Perpetuities.

SEC. 16. No perpetuities shall be allowed, except for eleemosynary purposes.

Bribery.

SEC. 17. Every person shall be disqualified from holding any office of profit in this state, who shall have been convicted of having given, or offered a bribe, to procure his election or appointment.

Right of suffrage.

SEC. 18. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

Residents absent.

SEC. 19. Absence from this state, on business of the state, or of the United States, shall not affect the question of residence of any person.

Plurality vote.

SEC. 20. A plurality of the votes given at an election shall constitute a choice, where not otherwise directed in this constitution.

Publication of laws, etc.

SEC. 21. All laws, decrees, regulations, and provisions, which from their nature require publication, shall be published in English and Spanish.

ARTICLE XII.

BOUNDARY.

lii. *State boundary.*

The boundary of the State of California shall be as follows:

Commencing at the point of intersection of the 42d degree of north latitude with the 120th degree of longitude west from Greenwich, and running south on the line of the said 120th degree of west longitude until it intersects the 39th degree of north latitude; thence running in a straight line in a southeasterly direction to the river Colorado, at a point where it intersects the 35th degree of north latitude; thence down the middle of the channel of said river to the boundary-line between the United States and Mexico, as established by the treaty of May 30, 1848; thence running west and along said boundary-line to

(a) This section is taken from the constitution of Texas. It creates a capacity in the wife to hold separate property, and her title depends upon the mode of acquisition and vests before the inventory can be filed. *Selover vs. American Russian Commercial Company*, 7 Cal. 266.

From the position that the capacity of the wife as to her separate property is equal to that of the husband as to his separate property, grave doubts exist as to the validity of some of the provisions of the statute relating to husband and wife. *Id.*

The term "separate property" is used in its common law sense, and means an estate, both in its use and in its title, for the exclusive benefit of the wife. Neither the husband nor his creditor can claim the proceeds or fruits of the separate estate of the wife. A law giving them such fruits is unconstitutional. *George vs. Ramsom*, 15 Cal. 322.

The rights of married women to their separate property in California do not depend alone upon the common law or doctrines of courts of equity, but mainly upon the constitution and statutes. *Maclay vs. Love*, 25 Cal. 367.

This clause does not refer to the mode and form in which a wife shall convey her separate property, and therefore a statute requiring a deed conveying such separate property, to be signed by the husband as well as the wife, is not unconstitutional. *Dow vs. Gould & Curry S. M. Co.*, 31 Cal. 630.

(b) The constitution is inoperative in itself, and looks to legislation to determine how far and in what manner the homestead should be protected from forced sale. *Cary vs. Tice*, 6 Cal. 625.

the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the 42d degree of north latitude; thence on the line of said 42d degree of north latitude to the place of beginning. Also all the islands, harbors, and bays, along and adjacent to the Pacific coast.

SCHEDULE.

liii. *Mexican laws in force.*

SECTION 1. All rights, prosecutions, claims and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, until altered or repealed by the legislature, shall continue as if the same had not been adopted.

Removal of causes.

SEC. 2. The legislature shall provide for the removal of all causes which may be pending when this constitution goes into effect, to courts created by the same.

Change of government.

SEC. 3. In order that no inconvenience may result to the public service, from the taking effect of this constitution, no officer shall be superseded thereby, nor the laws relative to the duties of the several officers be changed, until the entering into office of the new officers, to be appointed under this constitution.

Residence.

SEC. 4. The provisions of this constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the legislature at its first session.

liv. *Voters.*

SEC. 5. Every citizen of California, declared a legal voter by this constitution, and every citizen of the United States a resident of this state on the day of election, shall be entitled to vote at the first general election under this constitution, and on the question of the adoption thereof.

Constitution to be submitted to people.

SEC. 6. This constitution shall be submitted to the people for their ratification or rejection, at the general election to be held on Tuesday, the thirteenth day of November next. The executive of the existing government of California is hereby requested to issue a proclamation to the people, directing the prefects of the several districts, or in case of vacancy, the sub-prefects, or senior judge of first instance, to cause such election to be held, the day aforesaid, in the respective districts. The election shall be conducted in the manner which was prescribed for the election of delegates to this convention, except that the prefect, sub-prefect, or senior judge of first instance, ordering such election in each district, shall have power to designate any additional number of places for opening the polls, and that, in every place of holding the election, a regular poll-list shall be kept by the judges and inspectors of election. It shall also be the duty of these judges and inspectors of election, on the day aforesaid, to receive the votes of the electors qualified to vote at such election. Each voter shall express his opinion, by depositing in the ballot-box a ticket, whereon shall be written, or printed, "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These judges and inspectors shall also receive the votes for the several officers to be voted for at the said election as herein provided. At the close of the election, the judges and inspectors shall carefully count each ballot, and forthwith make

duplicate returns thereof to the prefect, sub-prefect, or senior judge of first instance, as the case may be, of their respective districts; and said prefect, sub-prefect, or senior judge of first instance, shall transmit one of the same, by the most safe and rapid conveyance, to the secretary of state. Upon the receipt of said returns, or on the tenth day of December next, if the returns be not sooner received, it shall be the duty of a board of canvassers, to consist of the secretary of state, one of the judges of the superior court, the prefect, judge of first instance, and an alcalde of the district of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said election, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the executive will also, immediately after ascertaining that the constitution has been ratified by the people, make proclamation of the fact; and thenceforth this constitution shall be ordained and established as the constitution of California.

Transmission to congress.

SEC. 7. If this constitution shall be ratified by the people of California, the executive of the existing government is hereby requested, immediately after the same shall be ascertained, in the manner herein directed, to cause a fair copy thereof to be forwarded to the president of the United States, in order that he may lay it before the congress of the United States.

Election of officers.

SEC. 8. At the general election aforesaid, viz., the thirteenth day of November next, there shall be elected a governor, lieutenant-governor, members of the legislature, and also two members of congress.

Meeting of legislature.

SEC. 9. If this constitution shall be ratified by the people of California, the legislature shall assemble at the seat of government on the fifteenth day of December next; and in order to complete the organization of that body, the senate shall elect a president pro tempore, until the lieutenant-governor shall be installed into office.

lv. Report of canvassers.

SEC. 10. On the organization of the legislature, it shall be the duty of the secretary of state to lay before each house a copy of the abstract made by the board of canvassers, and, if called for, the original returns of election, in order that each house may judge of the correctness of the report of said board of canvassers.

Legislative elections—United States senators.

SEC. 11. The legislature, at its first session, shall elect such officers as may be ordered by this constitution, to be elected by that body, and within four days after its organization, proceed to elect two senators to the congress of the United States. But no law passed by this legislature shall take effect until signed by the governor after his installation into office.

Application for admission into the Union.

SEC. 12. The senators and representatives to the congress of the United States elected by the legislature and people of California, as herein directed, shall be furnished with certified copies of this constitution, when ratified, which they shall lay before the congress of the United States, requesting, in the name of the people of California, the admission of the State of California into the American Union.

Installation of officers.

SEC. 13. All officers of this state, other than members of the legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

Appointment of legislators.

SEC. 14. Until the legislature shall divide the state into counties and senatorial and assembly districts, as directed by this constitution, the following shall be the apportionment of the two houses of the legislature, viz.: The districts of San Diego and Los Angeles, shall jointly elect two senators; the districts of Santa Barbara and San Luis Obispo, shall jointly elect one senator; the district of Monterey, one senator; the district of San Jose, one senator; the district of San Francisco, two senators; the district of Sonoma, one senator; the district of Sacramento, four senators; and the district of San Joaquin, four senators. And the district of San Diego shall elect one member of assembly; the district of Los Angeles, two members of assembly; the district of Santa Barbara, two members of assembly; the district of San Luis Obispo, one member of assembly; the district of Monterey, two members of assembly; the district of San Jose, three members of assembly; the district of San Francisco, five members of assembly; the district of Sonoma, two members of assembly; the district of Sacramento, nine members of assembly; and the district of San Joaquin, nine members of assembly.

Salaries.

SEC. 15. Until the legislature shall otherwise direct, in accordance with the provisions of this constitution, the salary of the governor shall be ten thousand dollars per annum; and the salary of the lieutenant-governor shall be double the pay of a state senator; and the pay of members of the legislature shall be sixteen dollars per diem, while in attendance, and sixteen dollars for every twenty miles' travel by the usual route from their residences, to the place of holding the session of the legislature, and in returning therefrom. And the legislature shall fix the salaries of all officers, other than those elected by the people, at the first election.

State expenditures.

SEC. 16. The limitation of the powers of the legislature, contained in Article Eight of this constitution, shall not extend to the first legislature elected under the same, which is hereby authorized to negotiate for such amount as may be necessary to pay the expenses of the state government.

R. SEMPLE,

President of the Convention, and Delegate from Benicia.

WM. G. MARCY, *Secretary.*

J. ARAM,	L. W. HASTINGS,	R. M. PRICE,
C. T. BOTTS,	HENRY HILL,	HUGO REID,
E. BROWN,	J. HOBSON,	JACINTO RODRIGUEZ,
J. A. CARRILLO,	J. MCH. HOLLINSWORTH,	PEDRO SANSEVAIN,
J. M. COVARRUBIAS,	J. M. JONES,	W. E. SHANNON,
E. O. CROSEY,	J. D. HOPPE,	W. S. SHERWOOD,
P. DE LA GUERRA,	T. O. LARKIN,	J. R. SNYDER,
L. DENT,	FRANCIS J. LIPPITT,	A. STEARNS,
M. DOMINGUEZ,	B. S. LIPPINCOTT,	W. M. STEUART,
K. H. DIMMICK,	M. M. MCCARVER,	J. A. SUTTER,
A. J. ELLIS,	JOHN MCDUGAL,	HENRY A. TEEFT,
S. C. FOSTER,	B. F. MOORE,	S. L. VERNEULE,
E. GILBERT,	MYRON NORTON,	M. G. VALLEJO,
W. M. GWIN,	P. ORD,	J. WALKER,
H. W. HALLECK,	MIGUEL PEDRORENA,	O. M. WOZENCRAFT.
JULIAN HANKS,	A. M. PICO,	

Act of Admission.

An Act for the admission of the State of California into the Union.

Approved September 9, 1850.

lvi. Admission of California.

WHEREAS, the people of California have presented a constitution, and asked admission into the Union, which constitution was submitted to congress by the president of the United States, by message, dated February thirteenth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government:—

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

Representatives.

SEC. 2. *And be it further enacted,* That, until the representatives in congress shall be apportioned, according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in congress.

Public lands—Non-resident proprietors—Navigable waters.

SEC. 3. *And be it further enacted,* That the said State of California is admitted into the Union upon the express condition that the people of said state, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax, or assessment of any description whatsoever, upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said state shall be common highways, and forever free, as well to the inhabitants of said state as to the citizens of the United States, without any tax, impost or duty therefor: provided, that nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that state.^(a)

(a) An act allowing persons, who have put improvements on lands of the United States, to remove them within six months after the lands shall have become private property is void, in so far as it relates to im-

provements which are a part of the realty, because in conflict with the act admitting the state into the Union. *Collins vs. Bartlett*, 44 Cal. 371.

Authentication of Public Acts, Records, and Judicial Proceedings, as between the States.

lvii. An Act to revise and consolidate the statutes of the United States in force on the first day of December, Anno Domini one thousand eight hundred and seventy-three.

Approved June 22, 1874.

Be it enacted by the senate and house of representatives of the United States in congress assembled:

* * * * *

TITLE XIII.
The Judiciary.

* * * * *

CHAPTER SEVENTEEN.

EVIDENCE.

* * * * *

Authentication of legislative acts and proof of judicial proceedings of states, etc.

SEC. 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

Proofs of records, etc., kept in offices not pertaining to courts.

SEC. 906. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by

the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

Copies of foreign records, etc., relating to land titles in the United States.

SEC. 907. It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the solicitor of the treasury, or the commissioner of the general land office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the solicitor of the treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals.

Little & Brown's edition of the statutes to be evidence.

SEC. 908. The edition of the laws and treaties of the United States published by Little & Brown, shall be competent evidence of the several public and private acts of congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several states, without any further proof or authentication thereof.

Naturalization Laws.

lviii. An Act to revise and consolidate the statutes of the United States in force on the first day of December, Anno Domini one thousand eight hundred and seventy-three.

Approved June 22, 1874.

Be it enacted by the senate and house of representatives of the United States in congress assembled:

* * * * *

TITLE XXX.

Naturalization.

Aliens, how naturalized.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common law jurisdiction and a seal and clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thou-

sand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be deemed and considered a citizen of the United States.

Aliens honorably discharged from military service.

SEC. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Minor residents.

SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be

admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona-fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of declarants.

SEC. 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oath proscribed^(a) by law.

Aliens of African nativity and descent.

SEC. 2169. The provisions of this Title shall apply to aliens of African nativity and to persons of African descent.

Residence of five years in United States.

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Alien enemies not admitted.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Children of persons naturalized under certain laws to be citizens.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

Police court of District of Columbia has no power to naturalize foreigners.

SEC. 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

(a) Error in the Roll; should be *prescribed*.

Naturalization of seamen.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Political Code.

An Act to establish a political code.

Approved March 12, 1872.

TITLE OF THE ACT.

1. *Title and divisions of this act.*

SECTION 1. This act shall be known as THE POLITICAL CODE OF THE STATE OF CALIFORNIA, and is divided into five parts, as follows:

PART I. OF THE SOVEREIGNTY AND PEOPLE OF THE STATE, AND OF THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.....	30
II. OF THE CHIEF POLITICAL DIVISIONS, SEAT OF GOVERNMENT, AND LEGAL DISTANCES OF THE STATE.....	75
III. OF THE GOVERNMENT OF THE STATE.....	220
IV. OF THE GOVERNMENT OF COUNTIES, CITIES AND TOWNS.....	3901
V. OF THE DEFINITION AND SOURCES OF LAW; THE COMMON LAW; THE PUBLICATION AND EFFECT OF THE CODES; AND THE EXPRESS REPEAL OF STATUTES.....	4466

PRELIMINARY PROVISIONS.

2. *When code takes effect.*

SEC. 2. This code takes effect at twelve o'clock, noon, of the first day of January, eighteen hundred and seventy-three.

3. *Not retroactive.*

SEC. 3. No part of it is retroactive, unless expressly so declared.

4. *Construction of the political code.*

SEC. 4. The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this State respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

5. *Provisions similar to existing laws, how construed.*

SEC. 5. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

6. *Tenure of office.*

SEC. 6. All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislature, and excepting offices filled by ap-

pointment. [*Amendment, approved March 30, 1874; Amendments, 1873-4, 3; took effect July 6, 1874.*^(a)

7. Construction of repeal as to certain officers.

SEC. 7. When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the four codes, such office ceases at the time the codes take effect.

8. Actions, etc., not affected by this code.

SEC. 8. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

9. Limitations shall continue to run.

SEC. 9. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code. [*Amendment, approved March 30, 1874; Amendments, 1873-4, 1; took effect July 6, 1874.*^(b)

10. Holidays.

SEC. 10. Holidays, within the meaning of this code, are: Every Sunday, the first day of January, the twenty-second day of February, the fourth of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the president of the United States, or by the governor of this State, for a public fast, thanksgiving or holiday.

[In the city and county of San Francisco, the county clerk is obliged to keep his office open on all election days, for the sole purpose of registering voters, and giving certificates and transfers. See act of March 7, 1876; 1875-6, 142; post 1117.]

11. Holidays.

SEC. 11. If the first day of January, the twenty-second day of February, the fourth of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday. [*Amendment, adopted March 30, 1874; Amendments, 1873-4, 2; took effect July 6, 1874.*^(c)

12. Computation of time.

SEC. 12. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

13. Certain acts not to be done on holidays.

SEC. 13. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law, or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

14. Seal defined.

SEC. 14. When the seal of a court, public officer, or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

(a) The original section did not have the words "and excepting offices filled by appointment."

(b) The original section, instead of the words "the time which has already run shall be deemed part of the time prescribed as such limitation by this code"

read "the time of limitation continues to run and has the like effect as if the whole period had begun and ended after its adoption."

(c) The original section did not have the words "the fourth of July."

15. *Joint authority.*

SEC. 15. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

16. *Words and phrases.*

SEC. 16. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

17. *Words, what they include.*

SEC. 17. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in the code the signification attached to them in this section, unless otherwise apparent in the context:

1. The word "property" includes both real and personal property;

[2.] The words "real property" are coextensive with lands, tenements and hereditaments;

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

4. The word "month" means a calendar month, unless otherwise expressed;

5. The word "will" includes codicils;

6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer; and the word "process," a writ or summons issued in the course of judicial proceedings;

7. The word "vessel," when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place;

8. The term "peace officer" signifies any of the officers mentioned in section eight hundred and seventeen of the penal code.

9. The term "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of the penal code;

10. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories. [*Amendment, approved March 30, 1874; Amendments, 1873-4, 2; took effect July 6, 1874.*^(a)]

(a) Original section:

SEC. 17. Whenever the terms mentioned in this section are employed in this code they are employed in the senses hereafter affixed to them; except where a different sense plainly appears:

1. The term "signature" includes any name, mark, or sign, written with intent to authenticate any instrument or writing.

2. The term "writing" includes both printing and writing.

3. The term "land," and the phrases, "real estate" and "real property," includes lands, tenements, and hereditaments, and all rights thereto and interests therein.

4. The words "personal property" include money,

goods, chattels, evidence of debt, and "things in action."

5. The word "property" includes personal and real property.

6. The word "month" means a calendar month, unless otherwise expressed; and the word "year," and also the abbreviation "A.D.," is equivalent to the expression "year of our Lord."

7. The word "oath" includes "affirmation" in all cases where an affirmation may be substituted for an oath; and in like cases the word "swear" includes the word "affirm." Every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose."

8. The word "state," when applied to the different

18. Statutes, laws, or rules inconsistent with code repealed.

SEC. 18. No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject, but in all cases provided for by this code all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided; nor does it affect any private statute not expressly repealed.

19. Certain statutes preserved.

SEC. 19. Nothing in either of the four codes affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws:

1. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts.

2. All acts consolidating cities and counties, and acts amending or supplementing such acts.

3. All acts for funding the state debt, or any part thereof, and for issuing state bonds, and acts amending or supplementing such acts.

4. All acts regulating and in relation to rodeos.

5. All acts in relation to judges of the plains.

6. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the state.

7. All acts in relation to a branch state prison.

8. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight.

9. An act for the suppression of Chinese houses of ill-fame, approved March thirty-first, eighteen hundred and sixty-six.

10. An act relating to the home of the inebriate of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof, approved April first, eighteen hundred and seventy.

11. An act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six.

12. An act to prevent the destruction of fish in the waters of Bolinas bay, in Marin county, approved March thirty-first, eighteen hundred and sixty-six.

13. An act concerning trout in Siskiyou county, approved April second, eighteen hundred and sixty-six.

14. An act to prevent the destruction of fish in Napa river and Sonoma creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

15. An act to prevent the destruction of fish and game in, upon, and around the waters of lake Merritt, or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy.

parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories.

9. Where the term "person" is used in this code to designate the party whose property may be the subject of any offense, action, or proceeding, it includes this state, any other state, government, or country which may lawfully own any property within this state, and all public and private corporations or joint associations, as well as individuals.

10. The word "person" includes bodies politic and corporate.

11. The singular number includes the plural, and the plural the singular.

12. Words used in the masculine gender comprehend as well the feminine and neuter.

13. Words used in the present tense include the future but exclude the past.

14. The word "will" includes codicils.

15. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court, or judicial officer.

16. "Process" is a writ or summons issued in the course of judicial proceedings.

17. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

18. The term "peace officer" signifies any one of the officers mentioned in section 817 of THE PENAL CODE.

19. The term "magistrate" signifies any one of the officers mentioned in section 808 of THE PENAL CODE.

16. An act to regulate salmon fisheries in Ecl river, in Humboldt county, approved April eighteenth, eighteen hundred and fifty-nine.

17. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey, and Mariposa, approved March twentieth, eighteen hundred and sixty-six.

18. An act concerning oysters, approved April twenty-eighth, eighteen hundred and fifty-one.

19. An act concerning oyster beds, approved April second, eighteen hundred and sixty-six.

20. An act concerning gas companies, approved April fourth, eighteen hundred and seventy.

21. An act to empower the board of supervisors of the several counties of the state to aid in the construction of a railroad in their respective counties, approved April fourth, eighteen hundred and seventy.

22. An act supplemental to the act mentioned in the preceding subdivision, approved April fourth, eighteen hundred and seventy.

23. All acts in relation to lawful fences, estrays, and the trespassing of animals upon private property.

24. An act for the relief of insolvent debtors and the protection of creditors, approved May fourth, eighteen hundred and sixty-two, and the acts amending and supplementing such act.

25. All acts in relation to taxation for local purposes.

26. All acts dividing counties into collection and assessment districts.

27. All acts allowing county or city and county officers to appoint deputies, clerks, and subordinate officers, in so far as such acts authorize the appointment and fix the compensation of such deputies, clerks, and subordinate officers.

20. *This act, how cited, etc.*

SEC. 20. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as THE POLITICAL CODE, adding, when necessary, the number of the section.

PART I.

OF THE SOVEREIGNTY AND PEOPLE OF THE STATE, AND
OF THE POLITICAL RIGHTS AND DUTIES OF ALL
PERSONS SUBJECT TO ITS JURISDICTION.

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TITLE I.

Sovereignty of the State.

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CHAPTER I.

RESIDENCE OF SOVEREIGNTY.

30. *Sovereignty resides in the people.*

SEC. 30. The sovereignty of the state resides in the people thereof, and all writs and processes must issue in their name.

CHAPTER II.

TERRITORIAL JURISDICTION OF THE STATE.

33. *Territorial jurisdiction, limitations on.*

SEC. 33. The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

34. *Legislative consent to purchase, etc., of lands by United States for public use; jurisdiction over.*

SEC. 34. The legislature consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts, magazines, arsenals, dock-yards, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made.

An Act concerning submarine sites for lighthouses and other aids to navigation on the coast of this state.

Approved March 26, 1874; 1873-4, 621.

Sites for beacons, etc.

SECTION 1. Whenever the United States desire to acquire title to land belonging to the state, and covered by the navigable waters of the United States,

within the limits thereof, for the site of a lighthouse, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same; provided, no single tract shall contain more than ten acres, and that the state shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof, upon any person or persons amenable to the same, within the limits of land so ceded, in like manner and to like effect as if this act had never been passed.

SEC. 2. This act shall take effect immediately.

CHAPTER III.

GENERAL RIGHTS OF THE STATE OVER PERSONS.

37. *Rights over persons enumerated.*

SEC. 37. The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law: .

1. To punish for crime;
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;
3. To imprison or confine for the purpose of enforcing civil remedies;
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind;
5. To establish custody and restraint of paupers for the purposes of their maintenance;
6. To establish custody and restraint of minors unprovided for by natural guardians for the purposes of their education, reformation, and maintenance;
7. To require services of persons, with or without compensation: In military duty; in jury duty; as witnesses; as town or village officers; in highway labor; in maintaining the public peace; in enforcing the service of process; in protecting life and property from fire, pestilence, wreck and flood; and in such other cases as are provided by statute.

CHAPTER IV.

GENERAL RIGHTS OF THE STATE OVER PROPERTY.

40. *Original and ultimate title.*

SEC. 40. The original and ultimate right to all property, real and personal, within the limits of this state, is in the people thereof.

41. *Property escheats, when.*

SEC. 41. All property, real and personal, within the limits of this state, which does not belong to any person, belongs to the people. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the people.

42. *Intruders on public lands of state.*

SEC. 42. If any person, under any pretense of any claim inconsistent with the sovereignty and jurisdiction of the state, intrudes upon any of the waste or ungranted lands of the state, the district attorney of the county must immediately report the same to the governor, who must thereupon, by a written order, direct the sheriff of the county to remove the intruder; and if resistance to the execution of the order is made or threatened, the sheriff may call to his aid the power of the county, as in cases of resistance to the writs of the people.

43. *Acquisition by taxation and assessment.*

SEC. 43. The state may acquire property by taxation in the modes authorized by law.

44. *By right of eminent domain.*

SEC. 44. It may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the mode provided in Title VII, Part III, of the CODE OF CIVIL PROCEDURE. [See post, 11,237.]

TITLE II.

Persons Composing the People of the State.**50. *Who are the people.***

SEC. 50. The people, as a political body, consist:

1. Of citizens who are electors;
2. Of citizens not electors.

51. *Who are citizens.*

SEC. 51. The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens and of alien public ministers and consuls;
2. All persons born out of this state who are citizens of the United States and residing within this state.

52. *Residence, rules for determining.*

SEC. 52. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can only be one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor child;
5. The residence of the husband is the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian;
7. The residence can be changed only by the union of act and intent.

TITLE III.

Political Rights and Duties of all Persons subject to the Jurisdiction of the State.**54. *All persons within the state subject to its jurisdiction.***

SEC. 54. Every person while within this state is subject to its jurisdiction and entitled to its protection.

55. *Allegiance.*

SEC. 55. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

56. *Allegiance may be renounced.*

SEC. 56. Allegiance may be renounced by a change of residence.

57. *Persons not citizens.*

SEC. 57. Persons in the state not its citizens are either:

1. Citizens of other states; or,
2. Aliens.

58. *Eligibility to office.*

SEC. 58. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided; and no person is eligible who is not such an elector.

59. *Rights and duties of citizens not electors.*

SEC. 59. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

60. *Rights and duties of citizens of other states.*

SEC. 60. A citizen of the United States who is not a citizen of this state, has the same rights and duties as a citizen of this state not an elector.

PART II.

OF THE CHIEF POLITICAL DIVISIONS, SEAT OF GOVERNMENT, AND LEGAL DISTANCES OF THE STATE.

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TITLE I.

Chief Political Divisions of the State.

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CHAPTER I.

COUNTIES.

75. *Counties.*

SEC. 75. The state is divided into counties; the names, boundaries, and territorial subdivisions thereof are as declared in Part IV of this Code.

[See post, 3901.]

CHAPTER II.

SENATORIAL DISTRICTS.

78. *Senatorial and assembly districts.*

[Secs. 78 to 106,^(a) inclusive, were superseded by the following act:]

An Act to define the senatorial and assembly districts of this State, and to apportion the representation thereof.

Approved March 16, 1874; 1873-4, 366.

First.

SECTION 1. The counties of San Diego and San Bernardino shall be the first senatorial district, and shall elect one senator; and each of said counties shall elect one member of the assembly.

Second.

SEC. 2. The county of Los Angeles shall be the second senatorial district, and shall elect one senator and two members of the assembly.

Third.

SEC. 3. The counties of Ventura, Santa Barbara, and San Luis Obispo, shall be the third senatorial district, and shall elect one senator; Ventura and Santa Barbara, jointly, shall elect one member of the assembly, and San Luis Obispo shall elect one member of the assembly.

Fourth.

SEC. 4. The counties of Tulare, Inyo, Fresno, Mono, and Kern, shall be the fourth senatorial district, and shall elect one senator; Fresno shall elect one member of the assembly, Tulare and Kern shall elect jointly one member of the assembly, and Mono and Inyo shall elect jointly one member of the assembly.

Fifth.

SEC. 5. The counties of Mariposa, Merced, and Stanislaus, shall be the fifth senatorial district, and shall elect one senator; Mariposa and Merced shall jointly elect one member of the Assembly, and Stanislaus shall elect one member of the assembly.

Sixth.

SEC. 6. The counties of Santa Cruz, Monterey, and San Benito, shall be the sixth senatorial district, and shall elect jointly one senator; and each of said counties shall elect one member of the assembly.

(a) Original (superseded) sections:

SEC. 78. The state is divided into twenty-eight senatorial districts, arranged as follows:

SEC. 79. The first senatorial district consists of the counties of San Diego and San Bernardino.

SEC. 80. The second, of the county of Los Angeles.

SEC. 81. The third, of the counties of Santa Barbara and San Luis Obispo.

[The county of Ventura was added to the third senatorial district by "An Act to create the County of Ventura, to establish the boundaries thereof, and to provide for its organization," approved March 22, 1872; 1871-2, 484.]

SEC. 82. The fourth, of the counties of Tulare, Fresno, and Kern.

SEC. 83. The fifth, of the counties of Mariposa, Merced, and Stanislaus.

SEC. 84. The sixth, of the counties of Santa Cruz and Monterey.

SEC. 85. The seventh, of the county of Santa Clara.

SEC. 86. The eighth, of the counties of San Francisco and San Mateo.

SEC. 87. The ninth, of the county of Alameda.

SEC. 88. The tenth, of the counties of Contra Costa and Marin.

SEC. 89. The eleventh, of the county of San Joaquin.

SEC. 90. The twelfth, of the counties of Tuolumne, Mono, and Inyo.

SEC. 91. The thirteenth, of the county of Calaveras.

SEC. 92. The fourteenth, of the counties of Amador and Alpine.

SEC. 93. The fifteenth, of the county of El Dorado.

SEC. 94. The sixteenth, of the county of Sacramento.

SEC. 95. The seventeenth, of the counties of Solano and Yolo.

SEC. 96. The eighteenth, of the counties of Napa, Lake, and Mendocino.

SEC. 97. The nineteenth, of the county of Sonoma.

SEC. 98. The twentieth, of the county of Placer.

SEC. 99. The twenty-first, of the county of Nevada.

SEC. 100. The twenty-second, of the county of Sierra.

SEC. 101. The twenty-third, of the counties of Yuba and Sutter.

SEC. 102. The twenty-fourth, of the counties of Butte, Plumas, and Lassen.

SEC. 103. The twenty-fifth, of the counties of Tehama and Colusa.

SEC. 104. The twenty-sixth, of the counties of Shasta and Trinity.

SEC. 105. The twenty-seventh, of the counties of Humboldt, Klamath, and Del Norte.

SEC. 106. The twenty-eighth, of the county of Siskiyou.

Seventh.

SEC. 7. The county of Santa Clara shall be the seventh senatorial district, and shall elect two senators and three members of the assembly.

Eighth.

SEC. 8. The city and county of San Francisco, and the county of San Mateo, shall be the eighth senatorial district, and shall elect one senator; the county of San Mateo shall elect one member of the assembly.

Ninth.

SEC. 9. That portion of the city and county of San Francisco, bounded and described as follows, to wit: commencing at a point where the southerly line of the United States military reservation, known as the "Presidio Reservation," intersects with the waters of the Pacific ocean; thence meandering along the waters of said ocean and the waters of the bay of San Francisco, northerly, easterly, and southerly, to the point where Washington street intersects with said bay; thence westerly, along said Washington street, to its intersection with First avenue; thence northerly, along said avenue, to its intersection with the southerly boundary-line of the said "Presidio Reservation;" thence westerly, and along the southerly boundary-line of said "Presidio Reservation" to its intersection with the Pacific ocean and the point of beginning; shall be the ninth senatorial district, and shall elect two senators and four members of the assembly.

Tenth.

SEC. 10. That portion of the city and county of San Francisco, bounded and described as follows, to wit: commencing at a point where the southerly boundary-line of the "Presidio Reservation" intersects with the waters of the Pacific ocean, thence easterly, and along the southerly boundary-line of said "Presidio Reservation," to the point where First avenue intersects with said boundary-line; thence southerly, along said First avenue, to the point where Washington street intersects with said First avenue; thence easterly, along said Washington street, to its intersection with the waters of the bay of San Francisco; thence southerly, along the line of said bay, to the point of intersection of Market street with said bay; thence westerly, along said Market street, to the point where Geary street intersects with said Market street; thence westerly, along said Geary street, to where it connects with the Point Lobos toll-road; thence along said Point Lobos toll-road, and said toll-road produced, in a direct line to the Pacific ocean; thence northerly, along said ocean, to the point of beginning; shall be the tenth senatorial district, and shall elect two senators and four members of the assembly.

Eleventh.

SEC. 11. That portion of the city and county of San Francisco, bounded and described as follows, to wit: commencing at a point on the line of Market street where Fourth street intersects with said Market street; thence easterly and along said Market street to the waters of the bay of San Francisco; thence southerly and southwesterly along the line of the waters of said bay, to a point where Fourth street intersects with said bay; thence northerly along the line of said Fourth street to the point of beginning; shall be the eleventh senatorial district, and shall elect two senators and four members of the assembly.

Twelfth.

SEC. 12. That portion of the city and county of San Francisco, bounded and described as follows, to wit: commencing at the intersection of Larkin and Geary streets, and running thence easterly along said Geary street to its intersection with Market street; thence southwesterly along the line of said Market

street to the point of intersection of Fourth street with said Market street; thence southerly along said Fourth street to the point of its intersection with Channel street; thence southwesterly along said Channel street to the point of its intersection with Eighth street; thence northerly along said Eighth street to the point of its intersection with Market street; thence southwesterly along said Market street to the point of the intersection of Larkin street with said Market street; thence northerly along said Larkin street to the point of beginning; shall be the twelfth senatorial district, and shall elect two senators and four members of the assembly.

Thirteenth.

SEC. 13. That part of the city and county of San Francisco, bounded and described as follows, to wit: commencing at a point where the Point Lobos toll-road produced in a direct line westerly, intersects with the waters of the Pacific ocean, and running thence easterly along said Point Lobos toll-road to the point of its connection with Geary street; thence along said Geary street easterly to its intersection with Larkin street; thence southerly along said Larkin street to the point of its intersection with Market street; thence northeasterly along said Market street to the point where Eighth street intersects with said Market street; thence southeasterly along said Eighth street to its intersection with Channel street; thence northeasterly along said Channel street to the point of its intersection with Fourth street; thence southeasterly along said Fourth street to the point of its intersection with the bay of San Francisco; thence southerly along the line of the waters of said bay to the point of intersection of the boundary-line between the city and county of San Francisco and the county of San Mateo with the waters of said bay; thence westerly along said boundary-line to the point of its intersection with the Pacific ocean; thence northerly along the line of said ocean to the point of beginning; shall be the thirteenth senatorial district, and shall elect two senators and four members of the assembly.

Fourteenth.

SEC. 14. The county of Alameda shall be the fourteenth senatorial district, and shall have two senators and three members of the assembly.

Fifteenth.

SEC. 15. The counties of Contra Costa and Marin shall be the fifteenth senatorial district, and shall elect one senator, and each of said counties shall elect one member of the assembly.

Sixteenth.

SEC. 16. The counties of San Joaquin and Amador shall be the sixteenth senatorial district; San Joaquin shall elect one senator, and, jointly with Amador, shall elect one senator; San Joaquin shall elect three members of the assembly, and Amador shall elect two members of the assembly.

Seventeenth.

SEC. 17. The counties of Tuolumne and Calaveras shall be the seventeenth senatorial district, and shall elect one senator, and each of said counties shall elect one member of the assembly.

Eighteenth.

SEC. 18. The county of Sacramento shall be the eighteenth senatorial district, and shall elect two senators and three members of the assembly.

Nineteenth.

SEC. 19. The counties of Solano and Yolo shall be the nineteenth senatorial district; Solano shall elect one senator and two members of the assembly; Yolo shall elect one member of the assembly, and, jointly with Solano, shall elect one senator.

Twentieth.

SEC. 20. The counties of Napa, Lake, and Sonoma shall constitute the twentieth senatorial district, and shall elect one senator; and Napa and Lake counties shall each elect one member of the assembly.

Twenty-first.

SEC. 21. The county of Sonoma shall be the twenty-first senatorial district, and shall elect one senator and three members of the assembly.

Twenty-second.

SEC. 22. The county of Placer shall be the twenty-second senatorial district, and shall elect one senator and one member of the assembly.

Twenty-third.

SEC. 23. The counties of El Dorado and Alpine shall be the twenty-third senatorial district, and shall elect one senator; the county of El Dorado shall elect one member of the assembly; and the counties of El Dorado and Alpine shall, jointly, elect one member of the assembly.

Twenty-fourth.

SEC. 24. The counties of Nevada and Sierra shall be the twenty-fourth senatorial district; Nevada shall elect one senator and three members of the assembly; Sierra shall elect one member of the assembly and one senator, jointly, with Nevada.

Twenty-fifth.

SEC. 25. The counties of Yuba and Sutter shall be the twenty-fifth senatorial district, and shall elect one senator; Yuba shall elect two members of the assembly, and Sutter shall elect one member of the assembly.

Twenty-sixth.

SEC. 26. The counties of Butte, Plumas, and Lassen shall be the twenty-sixth senatorial district, and shall elect one senator; Butte shall elect two members of the assembly, and Plumas and Lassen shall, jointly, elect one member of the assembly.

Twenty-seventh.

SEC. 27. The counties of Mendocino, Humboldt, Klamath, and Del Norte shall be the twenty-seventh senatorial district, and shall elect one senator; Humboldt and Mendocino shall each elect one member of the assembly, and Klamath and Del Norte shall, jointly, elect one member of the assembly.

Twenty-eighth.

SEC. 28. The counties of Siskiyou, Modoc, Trinity, and Shasta shall be the twenty-eighth senatorial district, and shall elect, jointly, one senator; Siskiyou and Modoc shall elect, jointly, one member of the assembly; Trinity and Shasta shall elect, jointly, one member of the assembly.

Twenty-ninth.

SEC. 29. The counties of Colusa and Tehama shall be the twenty-ninth senatorial district, and shall elect one senator and one member of the assembly.

Of elections.

SEC. 30. At the general election to be held in the year eighteen hundred and seventy-five, and every four years thereafter, there shall be elected in the first, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, fourteenth, fifteenth, sixteenth, eighteenth, nineteenth, twentieth, twenty-seventh, and twenty-ninth districts, one senator each, and in the twelfth and thirteenth districts, two senators each.

SEC. 31. At the general election to be held in the year eighteen hundred and seventy-seven, and every four years thereafter, there shall be elected in the

second, third, fourth, seventh, ninth, tenth, eleventh, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-third, twenty-fifth, twenty-sixth and twenty-eighth districts, one senator each, and in the twenty-fourth district, two senators.

SEC. 32. At the general election to be held in the year eighteen hundred and seventy-five, and every two years thereafter, members of the assembly shall be elected in the several districts and counties of the state as is provided in this act.

SEC. 33. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

CHAPTER III.

CONGRESSIONAL DISTRICTS.

117. *Congressional districts.*

[SEC. 117 ^(a) was superseded by the following act. See also post, 4479:]

An Act to divide the state into congressional districts.

Approved March 30, 1872; 1871-2. 714.

SECTION 1. For the purpose of electing representatives to the congress of the United States, the state is hereby divided into districts, as follows:

First.

SEC. 2. The first district shall be composed of the city and county of San Francisco.

Second.

SEC. 3. The second district shall be composed of the counties of Contra Costa, Alameda, San Joaquin, Calaveras, Amador, El Dorado, Sacramento, Placer, Nevada, Alpine, and Tuolumne.

Third.

SEC. 4. The third district shall be composed of the counties of Marin, Sonoma, Napa, Lake, Solano, Yolo, Sutter, Yuba, Sierra, Butte, Plumas, Lassen, Tehama, Colusa, Mendocino, Humboldt, Trinity, Shasta, Siskiyou, Klamath, and Del Norte.

Fourth.

SEC. 5. The fourth district shall be composed of the counties of San Diego, Los Angeles, San Bernardino, Santa Barbara, San Luis Obispo, Tulare, Monterey, Fresno, Kern, Merced, Mariposa, Stanislaus, Santa Clara, Santa Cruz, San Mateo, Mono and Inyo.

SEC. 6. This act shall take effect and be in force from and after its passage.

CHAPTER IV.

JUDICIAL DISTRICTS.

125. *Judicial districts.*

SEC. 125. The state is divided into seventeen judicial districts, arranged as described in this chapter.

(a) Original section:

SEC. 117. The state is divided into three congressional districts, arranged as follows:

1. The first congressional district consists of the counties of San Diego, Los Angeles, San Bernardino, Santa Barbara, San Luis Obispo, Tulare, Monterey, Fresno, Merced, Mariposa, Stanislaus, Santa Clara, Santa Cruz, San Mateo, San Francisco, Inyo and Kern;

2. The second, of the counties of Contra Costa, Ala-

meda, San Joaquin, Tuolumne, Mono, Calaveras, Amador, El Dorado, Sacramento, Placer, Nevada and Alpine; and,

3. The third, of the counties of Marin, Sonoma, Napa, Lake, Solano, Yolo, Sutter, Yuba, Sierra, Butte, Plumas, Lassen, Tehama, Colusa, Mendocino, Humboldt, Trinity, Shasta, Siskiyou, Klamath and Del Norte.

126. First judicial district.

SEC. 126. The first judicial district consists of the counties of Santa Barbara and San Luis Obispo.

[The county of Ventura was added to the first judicial district by "An act to create the county of Ventura, to establish the boundaries thereof, and to provide for its organization." Approved March 22, 1872; 1871-2, 484.]

127. Second judicial district.

SEC. 127. The second, of the counties of Tehama, Butte, Plumas, and Lassen.

[Plumas and Lassen counties were attached to and now constitute part of the twenty-first judicial district, by "An act to create the twenty-first judicial district," approved February 15, 1876; 1875-6, 58; given post, 142.]

128. Third judicial district.

[SEC. 128^(a) was superseded by the act given below, post, 142. See also post, 4479.]

129. Fourth judicial district.

[SEC. 129^(b) was superseded by the act given below, post, 142. See also post, 4449.]

130. Fifth judicial district.

SEC. 130. The fifth, of the counties of San Joaquin, Tuolumne, and Stanislaus.

131. Sixth judicial district.

SEC. 131. The sixth, of the counties of Sacramento and Yolo.

132. Seventh judicial district.

SEC. 132. The seventh, of the counties of Napa, Lake, and Solano. [*Amendment, approved March 29, 1876; Amendments, 1875-6; took effect from passage.*^(c)]

133. Eighth judicial district.

SEC. 133. The eighth, of the counties of Humboldt, Klamath, and Del Norte.

134. Ninth judicial district.

SEC. 134. The ninth, of the counties of Shasta, Trinity, and Siskiyou.

[The county of Modoc was added to the ninth judicial district by "An act to create the county of Modoc, to establish the boundaries thereof, and to provide for its organization," approved February 17, 1874; 1873-4, 124. It was afterwards attached to the twenty-first judicial district, to which it now belongs, by "An act to create the twenty-first judicial district," approved February 15, 1876; 1875-6, 58; given post, 142.]

135. Tenth judicial district.

SEC. 135. The tenth, of the counties of Yuba, Sutter, Colusa, and Sierra.

136. Eleventh judicial district.

SEC. 136. The eleventh, of the counties of Calaveras, Amador, and El Dorado.

(a) Original section:

SEC. 128. The third, of the counties of Monterey, Santa Cruz, Santa Clara, and Alameda.

(b) Original section:

SEC. 129. The fourth, of that portion of the city and county of San Francisco embraced within lines described as follows: Commencing at the western boundary of the city and county, at a point in a line with Ridley street; thence easterly in a line with and through the centre of Ridley street to the centre of Market street; thence northeasterly along the centre of Market street to the centre of Kearny street; thence northerly along the centre of Kearny street to a point in a line with the northern side of the City Hall or court-house; thence easterly to and along the northern line of the city hall or court-house to a point sixty-five

feet from the eastern line of Kearny street; thence at right angles southerly to the southern line of the City Hall or court-house; thence easterly along the southern side of that building to the eastern side thereof; thence northerly along the eastern line thereof to a point eight inches north of the northern line thereof; thence at right angles westerly to the centre of Kearny street; thence northerly along Kearny street to the northern boundary of the city and county; thence along the northern and western boundary of the city and county to the place of beginning.

(c) The original section had the words "Marina, Sonoma, Mendocino" before "Napa."

Marin, Sonoma, and Mendocino counties now compose the twenty-second judicial district. See post, 142.

137. Twelfth judicial district.

[SEC. 137^(a) was superseded by the act given below, post, 142. See also post, 4479.]

138. Thirteenth judicial district.

SEC. 138. The thirteenth, of the counties of Tulare, Fresno, Merced, and Mariposa.

139. Fourteenth judicial district.

SEC. 139. The fourteenth, of the counties of Placer and Nevada.

140. Fifteenth judicial district.

[SEC. 140^(b) was superseded by the act given below, post, 142. See post, 4479.]

141. Sixteenth judicial district.

SEC. 141. The sixteenth, of the counties of Alpine, Mono, Inyo, and Kern.

142. Seventeenth judicial district.

[SEC. 142^(c) was superseded by the act of February 20, 1872, given below. See also post, 4479.]

[The foregoing sections 128, 129, 137, 140 and 142, in relation to the third, fourth, twelfth, fifteenth and seventeenth judicial districts, though not expressly amended or repealed, have been superseded by the following acts:]

An Act to create the eighteenth judicial district, and for other purposes.

Approved February 20, 1872; 1871-2, 116.

*Seventeenth judicial district.**Eighteenth judicial district.*

SECTION 1. The seventeenth judicial district of this state is hereby divided, and the eighteenth judicial district created. The county of Los Angeles shall remain and hereafter constitute the seventeenth judicial district. The counties of San Diego and San Bernardino shall be hereafter known as and constitute the eighteenth judicial district.

Suits transferred.

SEC. 2. Suits brought and matters now pending in the district court of the counties of San Diego and San Bernardino shall be heard and determined in the eighteenth judicial district, as if such suits had been, after the creation of it, there commenced; and the process of the district court of the eighteenth judicial district shall be as effective for all such purposes as if the same were issued from the seventeenth judicial district.

Terms.

SEC. 3. The terms of the district court of the eighteenth judicial district, during each year, shall commence as follows: In the county of San Diego, on the third Monday of January, April, July, and October; in the county of San Bernardino, on the second Monday of March, June, September, and December. [Amendment approved March 16, 1876; 1875-6, 314; took effect from passage.^(d)

(a) Original section:

SEC. 137. The twelfth, of the county of San Mateo and all that portion of the city and county of San Francisco lying south of a line described as follows: Commencing at the western boundary of the city and county, at a point in a line with the centre of Ridley street; thence running easterly in a line with and through the centre of Ridley street to the centre of Market street; thence northeasterly along the centre of Market street to Kearny street; thence northeasterly along the centre of Kearny street to a point in a line with the northern side of the City Hall or court-house; thence easterly to and along the northern line of the City Hall or court-house to a point sixty-five feet from the eastern line of Kearny street; thence at right angles southerly to the southern line of the City Hall or court-house; thence along the southern line of that building to the eastern line of Kearny street;

thence southerly along the eastern line of Kearny street to the centre of Market street; thence northeasterly along the centre of Market street to the eastern boundary of the city and county.

(b) Original section:

SEC. 140. The fifteenth, of the county of Contra Costa and all that portion of the city and county of San Francisco not included within the limits of the fourth and twelfth judicial districts.

(c) Original section:

SEC. 142. The seventeenth, of the counties of Los Angeles, San Bernardino, and San Diego.

(d) The original section instead of "third," had the word "second." It also bore the following additional sentence at the end: "Said terms shall continue until the time fixed for holding a term in another or the same county in the district, if the business of the court shall require it."

Election of judge.

SEC. 4. At the special judicial election of the year one thousand eight hundred and seventy-three, and every six years thereafter, a district judge shall be elected for the eighteenth judicial district; and the judge so elected shall enter upon the discharge of his duties as such on the first day of January after his election.

Appointment.

SEC. 5. The governor shall appoint and commission, immediately after the passage of this act, some suitable person learned in the law, and a resident of said eighteenth judicial district, as district judge of said eighteenth judicial district, who shall hold his office until his successor shall have been elected and qualified, as provided in section four of this act.

Salary.

SEC. 6. The judge of the eighteenth judicial district shall receive a salary of four thousand dollars per annum, payable in the same manner as the salaries of other district judges of this State.

SEC. 7. This act shall take effect and be in force from and after its passage.

An Act creating the nineteenth and twentieth judicial districts, and defining the third, fourth, twelfth and fifteenth judicial districts.

Approved March 8, 1872; 1871-2, 301.

Twentieth judicial district.

SECTION 1. The twentieth judicial district shall be composed of the counties of Monterey, Santa Cruz, and Santa Clara.

Third judicial district.

SEC. 2. The third judicial district shall be composed of the county of Alameda, and all that portion of the city and county of San Francisco described as follows: Commencing at the eastern boundary line of said city and county, at a point in a line with the centre of Market street; thence southerly along the centre line of Market street to its intersection with the easterly line of Kearny street; thence northerly along said eastern line of Kearny street to the centre of California street; thence easterly along the centre line of California street to the northerly line of Market street; thence easterly along the northerly line of Market street and in the same course to the eastern boundary of said city and county; thence southerly along said eastern boundary of the city and county of San Francisco to the place of commencement.

Fifteenth judicial district.

SEC. 3. The fifteenth judicial district shall be composed of the county of Contra Costa and all that portion of the city and county of San Francisco described as follows: Commencing at a point in the eastern boundary-line of said city and county where the northern line of Market street protracted intersects the same; thence southwesterly and along the northern line of Market street to the centre of California street; thence westerly and along the centre of California street to the eastern line of Kearny street; thence northerly along the eastern line of Kearny street to the south line of the City Hall or courthouse; thence easterly along the south line of said building to the southeast corner thereof; thence northerly along the east line of said building and in the same direction to a point eight inches north of the north line of said building; thence westerly and parallel with the north line of said building to the centre of Kearny street; thence northerly and along the centre of Kearny street to the northern boundary of said city and county; thence easterly and southerly along the boundary of said city and county to the place of beginning.

Nineteenth judicial district.

SEC. 4. The nineteenth judicial district shall be composed of all that portion

of the city and county of San Francisco described as follows: Commencing at a point in the centre of Market street in a line with the centre of Larkin street thence running northerly and along the centre of Larkin street to a point in the centre of Washington street; thence easterly and along the centre of Washington street to the centre of Kearny street; thence southerly along the centre of Kearny street to the centre of Market street; thence southwesterly along the centre of Market street to the place of commencement.

Fourth judicial district.

SEC. 5. The fourth judicial district shall be composed of all that portion of the city and county of San Francisco described as follows: Commencing at the western boundary of said city and county at a point in a line with the centre of Ridley street; thence easterly and along the centre of Ridley street to the centre of Market street; thence northeasterly and along the centre of Market street to a point in a line with the centre of Larkin street; thence northerly along the centre of Larkin street to the centre of Washington street; thence easterly along the centre of Washington street to the centre of Kearny street; thence southerly along the centre of Kearny street to a point in a line with the north side of the City Hall or court-house; thence easterly to and along the northern line of the City Hall or court-house, sixty-five feet from the eastern line of Kearny street; thence southerly at a right angle to the south line of said City Hall or court-house; thence at a right angle easterly along the south line of said building to the east line thereof; thence northerly along said east line of said building to a point eight inches north of the north line of said building; thence at a right angle westerly to the centre of Kearny street; thence northerly along the centre of Kearny street to the northern boundary of said city and county; thence westerly along the northern boundary and southerly along the western boundary of said city and county of San Francisco to the place of commencement.

Twelfth judicial district.

SEC. 6. The twelfth judicial district shall be composed of the county of San Mateo and all that portion of the city and county of San Francisco described as follows: Commencing at the western boundary of said city and county at a point in a line with the centre of Ridley street; thence running easterly in a line with and through the centre of Ridley street to the centre of Market street; thence easterly along the centre of Market street to a point in a line with the centre of Kearny street; thence northeasterly along the centre of Kearny street to a point in a line with the northern side of the City Hall or court-house; thence easterly and along the northern line of the City Hall or court-house to a point sixty-five feet from the eastern line of Kearny street; thence at a right angle southerly to the southern line of the City Hall or court-house; thence along the southern line of that building to the eastern line of Kearny street; thence southerly along the eastern line of Kearny street to the centre of Market street; thence northeasterly along the centre of Market street to the eastern boundary of the city and county of San Francisco; thence southerly along said eastern boundary and westerly along the southern boundary and northerly along the western boundary to the place of commencement.

District judges.

SEC. 7. The district judges of the third, fourth, twelfth and fifteenth judicial districts, as herein defined, shall continue to be the respective judges of said districts until the expiration of their respective terms of office.

Appointments.

SEC. 8. The governor shall appoint, immediately after the passage of this

act, some suitable persons as district judges of the nineteenth and twentieth judicial districts, respectively, who shall hold their respective offices until the election and qualification of their successors at the next special judicial election.

Salaries.

SEC. 9. The district judge of the twentieth judicial district shall receive the sum of five thousand dollars per annum, and the district judge of the nineteenth judicial district shall receive the sum of six thousand dollars per annum, which respective salaries shall be payable at the same time and in the same manner as the salaries of other district judges are paid.

Clerks.

SEC. 10. The county clerk of the city and county of San Francisco shall be ex officio clerk of the district court of the third judicial district, in and for said city and county, and also ex officio clerk of the district court of the nineteenth judicial district, and is hereby authorized to appoint one register clerk and one court-room clerk for each of said courts, each of whom shall receive a salary of one hundred and seventy-five dollars per month; also, one additional copying clerk, who shall receive a salary of one hundred and fifty dollars per month. Such salaries shall be paid in the same manner as the salaries of other deputies of said county clerk.

Deputy sheriffs.

SEC. 11. The sheriff of said city and county of San Francisco is hereby authorized to appoint two deputies, in addition to those now appointed by him, who shall act as bailiffs or deputy sheriffs of said third and nineteenth district courts, in and for the city and county of San Francisco, who shall each receive a salary of one hundred and fifty dollars per month, to be paid in the same manner as other deputies of said sheriff are paid.

Suits transferred.

SEC. 12. Suits brought and matters pending in the district court in the counties of Monterey, Santa Cruz and Santa Clara, shall be heard and determined in the district court of the twentieth judicial district, in and for said counties respectively, as if such matters had been commenced in the district court of that district, and the process of said district court shall be effectual for all purposes as if the same were issued from the district court of the third judicial district; and the records of the district court of the third judicial district, in and for said counties of Monterey, Santa Cruz and Santa Clara, shall remain the records and papers of the twentieth judicial district court.

Terms.

SEC. 13. The terms of the district court of the twentieth judicial district shall commence as follows: In the county of Santa Clara on the first Monday of January, May, and September of each year; in the county of Santa Cruz on the second Monday of February, June, and October of each year; in the county of Monterey on the third Monday of March, July, and November of each year.

SEC. 14. The terms of the district court of the third judicial district shall commence as follows: In the county of Alameda on the third Monday of February, June, and October of each year; in the city and county of San Francisco on the third Monday of April, August, and December of each year.

SEC. 15. The terms of the district court of the nineteenth judicial district shall commence on the second Monday of April, August, and December of each year.

SEC. 16. This act shall take effect immediately.

An Act to create the twenty-first judicial district.

Approved February 15, 1876; 1875-6, 58.

Twenty-first judicial district.

SECTION 1. The twenty-first judicial district is hereby created, and shall be composed of the counties of Modoc, Lassen, and Plumas.

Actions pending.

SEC. 2. All actions and proceedings pending in the district court in said counties at the time this act goes into effect, shall be proceeded with, heard, and determined in the twenty-first judicial district, as if such action or proceeding had been commenced therein.

Terms.

SEC. 3. In the twenty-first judicial district the terms of the district court shall be held as follows: In the county of Modoc on the first Monday of February, May, August, and November; in the county of Lassen on the third Monday of February, May, August, and November; in the county of Plumas on the second Monday of March, first Monday of June, September, and December.

Election of judge.

SEC. 4. At the special judicial election held in the year one thousand eight hundred and seventy-seven, and every six years thereafter, a district judge shall be elected for the twenty-first judicial district, and the judge so elected shall go into office on the first Monday of January next after his election.

Appointment.

SEC. 5. When this act goes into effect the governor shall immediately appoint some person as district judge of the twenty-first judicial district, who shall hold his office until his successor is elected and qualified, as provided in this act.

Salary.

SEC. 6. The district judge of the twenty-first judicial district shall receive a salary of four thousand dollars per annum, payable at the same time and in the same manner as the salaries of other district judges of this state.

SEC. 7. This act shall take effect and be in force from and after the first day of June, A. D. eighteen hundred and seventy-six.

An Act to create the twenty-second judicial district.

Approved March 29, 1876; 1875-6, 528.

Twenty-second judicial district.

SECTION 1. The twenty-second judicial district is hereby created, and shall be composed of the counties of Mendocino, Sonoma, and Marin.

Actions pending.

SEC. 2. All actions and proceedings pending in the district court in said counties at the time this act goes into effect, shall be proceeded with, heard and determined in the twenty-second judicial district, as if such action or proceeding had been commenced therein.

Terms.

SEC. 3. In the twenty-second judicial district the terms of the said court shall be as follows: In the county of Marin on the third Mondays of March, July, and November; in the county of Mendocino the second Mondays of April, August, and December; in the county of Sonoma on the first Mondays of May and September, and the first Monday of February.

Election of judge.

SEC. 4. At the special judicial election held in the year one thousand eight hundred and seventy-seven, and every six years thereafter, a district judge shall be elected for the twenty-second judicial district, and the judge so elected shall go into office on the first Monday of January next after his election.

Appointment.

SEC. 5. When this act goes into effect the governor shall immediately appoint some person as district judge of the twenty-second judicial district, who shall hold his office until his successor is elected and qualified, as provided in this act.

Salary.

SEC. 6. The district judge of the twenty-second judicial district shall receive a salary of five thousand dollars per annum, payable at the same time and in the same manner as the salaries of other district judges of this state.

SEC. 7. This act shall take effect from and after its passage.

TITLE II.

Seat of Government.**145. Located at Sacramento.**

SEC. 145. The seat of government of this state is at the city of Sacramento.

TITLE III.

Legal Distances in the State.

[This entire title was amended by act approved April 3, 1876; Amendments 1875-6, 3, so as to read as follows. The original title had sections 150 to 201 inclusive, enlarged by the amendment, as seen below, to sections from 150 to 203 inclusive.]

150. Legal distances.

SEC. 150. The legal distances in this state are fixed as follows:

151. Alameda.

SEC. 151. From the county seat of Alameda county to Sacramento, ninety-one (91) miles; to Napa, forty-six (46) miles; to Stockton, eighty-five (85) miles; to San Quentin, nineteen (19) miles.

152. Alpine.

SEC. 152. From the county seat of Alpine county to Sacramento, two hundred and twenty-five (225) miles; to Napa, two hundred and eighty-six (286) miles; to Stockton, two hundred and seventy-three (273) miles; to San Quentin, three hundred and twenty-one (321) miles.

153. Amador.

SEC. 153. From the county seat of Amador county to Sacramento, fifty-nine (59) miles; to Napa, one hundred and ten (110) miles; to Stockton, fifty-seven (57) miles; to San Quentin, one hundred and forty-five (145) miles.

154. Butte.

SEC. 154. From the county seat of Butte county to Sacramento, seventy-eight (78) miles; to Napa, one hundred and thirty-nine (139) miles; to Stockton, one hundred and twenty-six (126) miles; to San Quentin, one hundred and seventy-four (174) miles.

155. Calaveras.

SEC. 155. From the county seat of Calaveras county to Sacramento, seventy-three (73) miles; to Napa, one hundred and thirty-four (134) miles; to Stockton, sixty (60) miles; to San Quentin, one hundred and sixty-four (164) miles.

156. Colusa.

SEC. 156. From the county seat of Colusa county to Sacramento, eighty (80) miles; to Napa, one hundred and forty-one (141) miles; to Stockton, one hundred and twenty-eight (128) miles; to San Quentin, one hundred and seventy-six (176) miles.

157. Contra Costa.

SEC. 157. From the county seat of Contra Costa county to Sacramento, eighty-nine (89) miles; to Napa, eighteen (18) miles; to Stockton, one hundred and twenty-one (121) miles; to San Quentin, forty-one (41) miles.

158. Del Norte.

SEC. 158. From the county seat of Del Norte county to Sacramento, three hundred and sixty-four (364) miles; to Napa, three hundred and nineteen (319) miles; to Stockton, three hundred and seventy-two (372) miles; to San Quentin, two hundred and ninety-two (292) miles.

159. El Dorado.

SEC. 159. From the county seat of El Dorado county to Sacramento, sixty-one (61) miles; to Napa, one hundred and twenty-two (122) miles; to Stockton, one hundred and nine (109) miles; to San Quentin, one hundred and fifty-seven (157) miles.

160. Fresno.

SEC. 160. From the county seat of Fresno county to Sacramento, one hundred and sixty-nine (169) miles; to Napa, two hundred and thirty (230) miles; to Stockton, one hundred and thirteen (113) miles; to San Quentin, two hundred and seven (207) miles.

161. Humboldt.

SEC. 161. From the county seat of Humboldt county to Sacramento, three hundred and twelve (312) miles; to Napa, two hundred and sixty-seven (267) miles; to Stockton, three hundred and twenty (320) miles; to San Quentin, two hundred and forty (240) miles.

162. Inyo.

SEC. 162. From the county seat of Inyo county to Sacramento, four hundred and seventy-one (471) miles; to Napa, five hundred and thirty-two (532) miles; to Stockton, four hundred and twenty-three (423) miles; to San Quentin, five hundred and eight (508) miles.

163. Kern.

SEC. 163. From the county seat of Kern county to Sacramento, two hundred and seventy-eight (278) miles; to Napa, three hundred and thirty-nine (339) miles; to Stockton, two hundred and thirty (230) miles; to San Quentin, three hundred and fifteen (315) miles.

164. Lake.

SEC. 164. From the county seat of Lake county to Sacramento, two hundred and four (204) miles; to Napa, one hundred and fifty-nine (159) miles; to Stockton, two hundred and twelve (212) miles; to San Quentin, one hundred and thirty-two (132) miles.

165. Lassen.

SEC. 165. From the county seat of Lassen county to Sacramento, one hundred and eighty-three (183) miles; to Napa, two hundred and forty-four (244) miles; to Stockton, two hundred and thirty-one (231) miles; to San Quentin, two hundred and seventy-nine (279) miles.

166. Los Angeles.

SEC. 166. From the county seat of Los Angeles county to Sacramento, four

hundred and seventy-eight (478) miles; to Napa, four hundred and thirty-three (433) miles; to Stockton, four hundred and eighty-six (486) miles; to San Quentin, four hundred and six (406) miles.

167. Marin.

SEC. 167. From the county seat of Marin county to Sacramento, ninety-six (96) miles; to Napa, fifty-one (51) miles; to Stockton, one hundred and four (104) miles; to San Quentin, three (3) miles.

168. Mariposa.

SEC. 168. From the county seat of Mariposa county to Sacramento, one hundred and fifty-six (156) miles; to Napa, two hundred and seventeen (217) miles; to Stockton, one hundred and nine (109) miles; to San Quentin, one hundred and ninety-three (193) miles.

169. Mendocino.

SEC. 169. From the county seat of Mendocino county to Sacramento, two hundred and five (205) miles; to Napa, one hundred (100) miles; to Stockton, two hundred and thirteen (213) miles; to San Quentin, one hundred and thirty-three (133) miles.

170. Merced.

SEC. 170. From the county seat of Merced county to Sacramento, one hundred and fourteen (114) miles; to Napa, one hundred and seventy-five (175) miles; to Stockton, sixty-six (66) miles; to San Quentin, one hundred and fifty-two (152) miles.

171. Modoc.

SEC. 171. From the county seat of Modoc county to Sacramento, three hundred and seventy-nine (379) miles; to Napa, four hundred and forty (440) miles; to Stockton, four hundred and twenty-seven (427) miles; to San Quentin, four hundred and seventy-five (475) miles.

172. Mono.

SEC. 172. From the county seat of Mono county to Sacramento, two hundred and ninety-six (296) miles; to Napa, three hundred and fifty-seven (357) miles; to Stockton, three hundred and forty-four (344) miles; to San Quentin, three hundred and ninety-two (392) miles.

173. Monterey.

SEC. 173. From the county seat of Monterey county to Sacramento, one hundred and ninety-six (196) miles; to Napa, one hundred and fifty-seven (157) miles; to Stockton, one hundred and forty-eight (148) miles; to San Quentin, one hundred and thirty (130) miles.

174. Napa.

SEC. 174. From the county seat of Napa county to Sacramento, sixty-one (61) miles; to Stockton, eighty-seven (87) miles; to San Quentin, fifty-one (51) miles.

175. Nevada.

SEC. 175. From the county seat of Nevada county to Sacramento, seventy-one (71) miles; to Napa, one hundred and thirty-two (132) miles; to Stockton, one hundred and nineteen (119) miles; to San Quentin, one hundred and sixty-seven (167) miles.

176. Placer.

SEC. 176. From the county seat of Placer county to Sacramento, thirty-seven (37) miles; to Napa, ninety-eight (98) miles; to Stockton, eighty-five (85) miles; to San Quentin, one hundred and thirty-three (133) miles.

177. Plumas.

SEC. 177. From the county seat of Plumas county to Sacramento, one

hundred and thirty-six (136) miles; to Napa, one hundred and ninety-seven (197) miles; to Stockton, one hundred and eighty-four (184) miles; to San Quentin, two hundred and thirty-two (232) miles.

178. *Sacramento.*

SEC. 178. From the county seat of Sacramento to Napa, sixty-one (61) miles; to Stockton, forty-eight (48) miles; to San Quentin, ninety-six (96) miles.

179. *San Benito.*

SEC. 179. From the county seat of San Benito county to Sacramento, one hundred and seventy-three (173) miles; to Napa, one hundred and thirty-four (134) miles; to Stockton, one hundred and twenty-five (125) miles; to San Quentin, one hundred and seven (107) miles.

180. *San Bernardino.*

SEC. 180. From the county seat of San Bernardino county to Sacramento, five hundred and eighty-eight (588) miles; to Napa, five hundred and forty-three (543) miles; to Stockton, five hundred and thirty (530) miles; to San Quentin, five hundred and sixteen (516) miles.

181. *San Diego.*

SEC. 181. From the county seat of San Diego county to Sacramento, five hundred and fifty-two (552) miles; to Napa, five hundred and seven (507) miles; to Stockton, five hundred and sixty (560) miles; to San Quentin, four hundred and eighty (480) miles.

182. *San Francisco.*

SEC. 182. From the county seat of San Francisco county to Sacramento, eighty-four (84) miles; to Napa, thirty-nine (39) miles; to Stockton, ninety-two (92) miles; to San Quentin, twelve (12) miles.

183. *San Joaquin.*

SEC. 183. From the county seat of San Joaquin county to Sacramento, forty-eight (48) miles; to Napa, eighty-seven (87) miles; to San Quentin, one hundred and four (104) miles.

184. *San Luis Obispo.*

SEC. 184. From the county seat of San Luis Obispo county to Sacramento, two hundred and ninety-three (293) miles; to Napa, two hundred and forty-eight (248) miles; to Stockton, two hundred and eighty-seven (287) miles; to San Quentin, two hundred and twenty-one (221) miles.

185. *San Mateo.*

SEC. 185. From the county seat of San Mateo county to Sacramento, one hundred and five (105) miles; to Napa, sixty (60) miles; to Stockton, one hundred and thirteen (113) miles; to San Quentin, thirty-three (33) miles.

186. *Santa Barbara.*

SEC. 186. From the county seat of Santa Barbara county to Sacramento, three hundred and sixty-nine (369) miles; to Napa, three hundred and twenty-four (324) miles; to Stockton, three hundred and seventy-seven (377) miles; to San Quentin, two hundred and ninety-seven (297) miles.

187. *Santa Clara.*

SEC. 187. From the county seat of Santa Clara county to Sacramento, one hundred and twenty-eight (128) miles; to Napa, eighty-nine (89) miles; to Stockton, eighty (80) miles; to San Quentin, sixty-two (62) miles.

188. *Santa Cruz.*

SEC. 188. From the county seat of Santa Cruz county to Sacramento, two hundred and five (205) miles; to Napa, one hundred and sixty (160) miles; to Stockton, one hundred and fifty-one (151) miles; to San Quentin, one hundred and thirty-three (133) miles.

189. Shasta.

SEC. 189. From the county seat of Shasta county to Sacramento, one hundred and seventy-seven (177) miles; to Napa, two hundred and thirty-eight (238) miles; to Stockton, two hundred and twenty-five (225) miles; to San Quentin, two hundred and seventy-three (273) miles.

190. Sierra.

SEC. 190. From the county seat of Sierra county to Sacramento, one hundred and nineteen (119) miles; to Napa, one hundred and seventy (170) miles; to Stockton one hundred and sixty-seven (167) miles; to San Quentin, two hundred and fifteen (215) miles.

191. Siskiyou.

SEC. 191. From the county seat of Siskiyou county to Sacramento, two hundred and eighty-five (285) miles; to Napa, three hundred and forty-six (346) miles; to Stockton, three hundred and thirty-three (333) miles; to San Quentin, three hundred and seventy-one (371) miles.

192. Solano.

SEC. 192. From the county seat of Solano county to Sacramento, forty (40) miles; to Napa, twenty-one (21) miles; to Stockton, eighty-eight (88) miles; to San Quentin, fifty-six (56) miles.

193. Sonoma.

SEC. 193. From the county seat of Sonoma county to Sacramento, one hundred and forty-one (141) miles; to Napa, thirty-five (35) miles; to Stockton, one hundred and forty-nine (149) miles; to San Quentin, sixty-nine (69) miles.

194. Stanislaus.

SEC. 194. From the county seat of Stanislaus county to Sacramento, seventy-seven (77) miles; to Napa, one hundred and thirty-eight (138) miles; to Stockton, thirty (30) miles; to San Quentin, one hundred and fourteen (114) miles.

195. Sutter.

SEC. 195. From the county seat of Sutter county to Sacramento, fifty (50) miles; to Napa one hundred and eleven miles; to Stockton, ninety-eight miles; to San Quentin, one hundred and forty-six miles.

196. Tehama.

SEC. 196. From the county seat of Tehama county to Sacramento, one hundred and thirty-five miles; to Napa, one hundred and ninety-six miles; to Stockton, one hundred and eighty-three miles; to San Quentin, two hundred and thirty-one miles.

197. Trinity.

SEC. 197. From the county seat of Trinity county to Sacramento, two hundred and seventeen miles; to Napa, two hundred and seventy-eight miles; to Stockton, two hundred and sixty-five miles; to San Quentin, three hundred and thirteen miles.

198. Tulare.

SEC. 198. From the county seat of Tulare county to Sacramento, two hundred and eleven miles; to Napa, two hundred and seventy-two miles; to Stockton, one hundred and sixty-three miles; to San Quentin, two hundred and forty-nine miles.

199. Tuolumne.

SEC. 199. From the county seat of Tuolumne county to Sacramento, one hundred miles; to Napa, one hundred and sixty-one miles; to Stockton, fifty-two miles; to San Quentin, one hundred and sixty-six miles.

200. Ventura.

SEC. 200. From the county seat of Ventura county to Sacramento, three hundred and ninety-two miles; to Napa, three hundred and forty-seven miles; to Stockton, four hundred miles; to San Quentin, three hundred and twenty miles.

201. Yolo.

SEC. 201. From the county seat of Yolo county to Sacramento, twenty miles; to Napa, forty-one miles; to Stockton, sixty-eight miles; to San Quentin, ninety-two miles.

202. Yuba.

SEC. 202. From the county seat of Yuba county to Sacramento, fifty-two miles; to Napa, one hundred and thirteen miles; to Stockton, one hundred miles; to San Quentin, one hundred and forty-six miles.

203. Mileage.

SEC. 203. When mileage is allowed by law to any person, the distance must be computed as herein fixed. [*Amendment of entire title, approved April 3, 1876; Amendments, 1875-6, 3; took effect immediately; repealed conflicting acts.*^(a)]

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TITLE I.

Public Officers.

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(a) It is deemed impracticable to give the original sections providing legal distances. If desired, they can be found in editions of the Political Code as approved in 1873, amended as to Inyo by act of February

4, 1874; Amendments 1873-4, 61, and as to Sutter by act of March 30, 1874; Amendments 1873-4, 3. The distances in Ventura county were provided for by act of January 9, 1874; 1873-4, 21.

CHAPTER I.

CLASSIFICATION OF PUBLIC OFFICERS.

220. *Classification of public officers.*

SEC. 220. The public officers of this state are classified as follows:

1. Legislative;
2. Executive;
3. Judicial;
4. Ministerial officers and officers of the courts;

But this classification is not to be construed as defining the legal powers of either class.

CHAPTER II.

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ARTICLE I.

NUMBER, DESIGNATION, TERM OF OFFICE, AND ELECTION OF MEMBERS OF THE LEGISLATURE.

225. *Number and designation.*

SEC. 225. The legislature consists of:

1. Forty senators; and,
2. Eighty members of the assembly.

226. *Term of office.*

SEC. 226. The term of office of a senator is four years; of a member of the assembly, two years.

228. *Election of senators and members of assembly.*

[SECS. 227, 228, 229, and 230^(a) were superseded by "An act to define the senatorial and assembly districts of this state, and to apportion the representa-

(a) Original (superseded) sections:

SEC. 227. At the general election in the year eighteen hundred and seventy-three, and at the general election every four years thereafter, there must be elected in the second, third, fourth, seventh, ninth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, nineteenth, twentieth, twenty-first, twenty-second, and twenty-eighth senatorial districts, one senator each; and in the eighth senatorial district, two senators by the county of San Francisco; and in the twenty-third senatorial district, one senator by the counties of Yuba and Sutter jointly; and in the twenty-fourth senatorial district, one senator by the county of Butte.

SEC. 228. At the general election in the year eighteen hundred and seventy-five, and at the general election every four years thereafter, there must be elected in the first, fifth, sixth, tenth, eleventh, twelfth, thirteenth, fifteenth, sixteenth, eighteenth, twentieth, twenty-first, twenty-fifth, twenty-sixth, and twenty-seventh senatorial districts, one senator each; and in

the eighth senatorial district, three senators—two by the county of San Francisco, and one by the counties of San Francisco and San Mateo jointly; and in the twenty-third senatorial district, one senator by the county of Yuba; and in the twenty-fourth senatorial district, one senator by the counties of Butte, Plumas, and Lassen, jointly.

SEC. 229. The members of the assembly must be elected at the general election in the year eighteen hundred and seventy-three, and at the general election every two years thereafter.

SEC. 230. The number of members of the assembly to be chosen in the several counties is as follows: In the county of San Diego, one; in the county of San Bernardino, one; in the county of Los Angeles, two; in the counties of Santa Barbara and San Luis Obispo, one; in the county of Fresno, one; in the counties of Tulare and Kern, one; in the county of Mariposa, one; in the counties of Merced and Stanislaus, one; in the county of Santa Cruz, one; in the county of Monterey, one; in the county of Santa Clara, three; in the county of San

tion thereof," approved March 16, 1874; 1873-4, 366. The act is given in full, ante, 78.]

ARTICLE II.

MEETING AND ORGANIZATION OF THE LEGISLATURE.

235. *Time and place of meeting.*

SEC. 235. The legislature must assemble at the seat of government on the first Monday in December, eighteen hundred and seventy-three, and on the first Monday in December every two years thereafter.

236. *Certificate of election evidence of right to seat.*

SEC. 236. The certificate of election is *prima facie* evidence of the right to membership. [*Amendment, approved March 30, 1874; Amendments 1873-4, 3; took effect July 6, 1874.*^(a)]

237. *Secretary, clerk, and sergeant-at-arms to hold until successors elected.*

SEC. 237. The secretary of the senate, and clerk of the assembly, the minute clerks, and sergeant-at-arms of each house for any session must, at the next succeeding session of the body perform the duties of their offices until their successors are elected and qualified.

238. *Senate, organization of.*

SEC. 238. At the hour of twelve o'clock m., on the day appointed for the meeting of any regular session of the legislature, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the members and members elect to order, and then cause the secretary to call over the senatorial districts, in their order, from which members have been elected at the preceding election, and as the same are called the members elect must present their certificates, take the constitutional oath of office, and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

239. *Assembly, organization of.*

SEC. 239. At the time specified in section two hundred and thirty-eight, the clerk of the assembly, or in case of his absence or inability, then the senior member elect present, must take the chair, call the members elect to order, and then call over the roll of counties in alphabetical order; and as the same are called the members elect must present their certificates, take the constitutional oath of office, and assume their seats. The assembly may thereupon, if a quorum is present, proceed to elect its officers.

240. *Oath to be entered on journal.*

SEC. 240. An entry of the oath taken by members of the legislature must be made on the journals of the proper house.

ARTICLE III.

NUMBER, DESIGNATION, ELECTION, AND APPOINTMENT OF OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

245. *Officers of senate.*

SEC. 245. The officers and employees of the senate consist of a president,

Francisco, twelve; in the county of San Mateo, one; in the county of Alameda, two; in the county of Contra Costa, one; in the county of Marin, one; in the county of San Joaquin, two; in the counties of Tuolumne, Mono, and Inyo, three; in the county of Calaveras, three; in the counties of Amador and Alpine, two; in the county of El Dorado, four; in the county of Sacramento, five; in the county of Solano, one; in the county of Yolo, one; in the counties of Napa and Lake, one; in the county of Mendocino, one; in the county of Sonoma, three; in the county of Placer, three; in the

county of Nevada, four; in the county of Sierra, two; in the county of Yuba, three; in the county of Sutter, one; in the county of Butte, two; in the counties of Plumas and Lassen, one; in the counties of Tehama and Colusa, one; in the county of Shasta, one; in the county of Trinity, one; in the county of Humboldt, one; in the counties of Klamath and Del Norte, one; in the county of Siskiyou, two.

(a) The original section had the word "primary" instead of "*prima facie*."

president pro tem, one secretary, two assistant secretaries, one sergeant-at-arms, one assistant sergeant-at-arms, one minute clerk, one journal clerk, one enrolling clerk, one engrossing clerk, three pages, three porters, and one postmaster, who, without additional compensation, shall be paper folder. [*Amendment, approved March 31, 1876; Amendments, 1875-6, 8; took effect sixtieth day after passage.*^(a)

246. *Officers of assembly.*

SEC. 246. The officers and employees of the assembly consist of a speaker, speaker pro tem, one chief clerk, two assistant clerks, one sergeant-at-arms, one assistant sergeant-at-arms, one minute clerk, one journal clerk, one enrolling clerk, one engrossing clerk, four porters, four pages, and one postmaster, who, without additional compensation, shall be paper folder. [*Amendment, approved March 31, 1876; Amendments 1875-6, 8; took effect sixtieth day after passage.*^(a)

247. *How elected.*

SEC. 247. All officers and employees of the legislature, except the president of the senate, porters and pages, must be elected by the house to which such officers and employees are attached. The porters and pages shall be appointed by the presiding officers of their respective houses. [*Amendment, approved March 31, 1876; Amendments 1875-6, 8; took effect sixtieth day after passage.*^(b)

248. *Engrossing and enrolling clerks and assistants.*

SEC. 248. The engrossing clerks and enrolling clerks of the senate and assembly shall have no power to appoint any assistants at a per diem, but shall have exclusive control of all engrossing and enrolling that may come into their respective offices, and shall be required to report all bills back within forty-eight hours after their reception, unless further time be granted. Should the amount of work in either of the above-named offices accumulate so that the clerk cannot complete the same within the time specified, then the engrossing or enrolling clerk may employ such assistance as may be necessary to complete the work within the time specified in this act. [*New section, approved March 31, 1876; Amendments 1875-6, 8; took effect sixtieth day after passage.*

249. *Pay of assistants.*

SEC. 249. All work performed by assistants in the engrossing and enrolling clerks' offices, shall be paid for out of the contingent fund of the respective houses in which the work is performed, as follows: For work performed in the engrossing clerks' office, not to exceed the sum of fifteen cents per folio of one hundred words; and for work performed in the enrolling clerks' offices, not to exceed the sum of twenty-five cents per folio of one hundred words. All bills for engrossing, or enrolling, shall be made out by the clerk and presented, at the end of each week, to the committee on expenditures and accounts, or such other committee as either house may designate, whose duty it shall be to audit and certify to the correctness of the same. Upon this certificate the controller shall draw his warrant in favor of the clerk in whose office the work has been done, for the amount performed each week, and the clerk shall receive and pay the same to his assistants, and shall become personally responsible to his assistants for their pay, and to their respective houses for all bills received by them. [*New section, approved March 31, 1876; Amendments 1875-6, 9; took effect sixtieth day after passage.*

(a) The original section provided also for "two copying clerks" and for "one post-office page and one paper folder." It did not have the words "who, without additional compensation, shall be paper folder."

(b) The original section did not have the words "porters and pages," nor the last sentence relating to their appointment.

ARTICLE IV.

POWERS AND DUTIES OF THE OFFICERS AND EMPLOYEES OF THE LEGISLATURE.

252. *What officers of, may administer oaths.*

SEC. 252. The president and president pro tem of the senate, and the speaker and speaker pro tem of the assembly, may administer the oath of office to any senator or assemblyman, and to the officers of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination.

253. *Duties of secretary and clerk.*

SEC. 253. The secretary of the senate and the chief clerk of the assembly must attend each day, call the roll, read the journal and bills, and superintend all copying necessary to be done for their respective houses.

254. *Duties of assistant secretary and assistant clerk.*

SEC. 254. The assistant secretaries of the senate and the assistant clerks of the assembly must take charge of all bills, petitions, and other papers presented to their respective houses, file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the secretary of the senate and chief clerk of the assembly.

255. *Duties of minute clerk.*

SEC. 255. The minute clerk of the senate and the minute clerk of the assembly must keep a correct record of the proceedings of their respective houses.

256. *Duties of journal clerk of senate.*

SEC. 256. The journal clerk of the senate must record each day's proceedings in the journal, from which they must be read by the secretary each day of meeting, and then be authenticated by the signature of the president.

257. *Duties of journal clerk of assembly.*

SEC. 257. The journal clerk of the assembly must record each day's proceedings in the journal, from which they must be read by the clerk each day of meeting, and then be authenticated by the signature of the speaker.

258.

[SEC. 258^(a) was repealed by act approved March 31, 1876; *Amendments* 1875-6, 9; took effect sixtieth day after passage.]

259. *Duties of sergeants-at-arms.*

SEC. 259. The sergeant-at-arms of the senate, and the sergeant-at-arms of the assembly, must give a general supervision, under the direction of their presiding officers, to the senate and assembly chambers, with the rooms attached; attend during the sittings of their respective bodies, execute their commands and all process issued by their authority; keep an account for pay and mileage of members, and prepare checks for the same.

260. *Duties of assistant sergeants-at-arms.*

SEC. 260. The assistant sergeant-at-arms of each house must perform the duties of doorkeeper, prohibit all persons, except members, officers, and employees, and such other persons as may have the privilege of the floor assigned them by the rules of each house, from entering within the bar of the house, unless upon invitation, and keep order in the halls and lobbies.

261. *Duties of officers at close of session.*

SEC. 261. The secretary and assistant secretaries of the senate, and chief clerk and assistant clerks of the assembly, at the close of each session of the

(a) Repealed section:

SEC. 258. The copying clerks must perform such

copying for the printer as is ordered by their respective houses.

legislature, must mark, label, and arrange all bills and papers belonging to the archives of their respective houses, and deliver them, together with all the books of both houses, to the secretary of state, who must certify to the reception of the same.

ARTICLE V.

COMPENSATION OF MEMBERS, OFFICERS, AND EMPLOYEES OF THE LEGISLATURE.

266. *Per diem and mileage of members.*

SEC. 266. Members of the legislature receive ten dollars per day during the session of the legislature, and three dollars for every twenty miles of travel to and from their residences to the place of holding the session.

267. *Per diem and mileage of presiding officers.*

SEC. 267. The president pro tem. of the senate, and speaker and speaker pro tem. of the assembly, each receive twelve dollars per day during the session of the legislature.

268. *Compensation of other officers and employees.*

SEC. 268. There must be paid to the secretary, assistant secretaries, minute, journal, enrolling, and engrossing clerks, and sergeant-at-arms of the senate, the chief clerk, assistant clerks, minute, journal, enrolling, and engrossing clerks, and sergeant-at-arms of the assembly, each eight dollars per day; to the assistant sergeant-at-arms of the senate and assembly, each six dollars per day; to the porters of the senate and assembly, each four dollars per day; to each committee clerk appointed by authority of either house, five dollars per day, except the clerks of the judiciary committees, who must be paid eight dollars per day; to the pages and postmasters of the senate and assembly, each three dollars per day. [*Amendment, approved March 31, 1876; Amendments 1875-6; took effect sixtieth day after passage.*^(a)]

269. *Compensation for services after close of session.*

SEC. 269. For services performed under the provisions of section 261 of this code, each of the officers therein named receive a compensation of fifty dollars.

ARTICLE VI.

CONTESTING ELECTIONS FOR MEMBERS OF THE LEGISLATURE.

273. *Who may contest.*

SEC. 273. The right of any person declared elected to a seat in the senate or assembly may be contested by any qualified voter of the county or district to be represented by such senator or assemblyman.

274. *Statement of cause of contest to be filed.*

SEC. 274. The person contesting such election must, within twenty days after the certificate of election is issued, file with the clerk of the county, or one of the counties in which the alleged cause of contest originated, a statement of the grounds of contest, verified by his oath. [*Amendment, approved March 30, 1874; Amendments 1873-4, 4; took effect July 6, 1874.*^(b)]

(a) Original section:

SEC. 268. There must be paid to the secretary, the assistant secretaries, journal clerk, and minute clerk of the senate, and to the chief clerk, assistant clerks, journal clerk, and minute clerk of the assembly, each the sum of eight dollars per day; to the enrolling, engrossing, and copying clerks of the senate and assembly, each eight dollars per day; to the sergeant-at-arms of the senate and to the sergeant-at-arms of the assembly, each six dollars per day; to the assistant sergeant-at-arms of the senate and of the assembly,

each six dollars per day; to the porters of the senate and assembly, each four dollars per day; to each committee clerk, appointed by authority of either house, five dollars per day, except the clerks of the judiciary committees, who must each be paid eight dollars per day; to the pages, post-office pages, postmasters, and paper folders of the senate and assembly, each three dollars per day.

(b) The original section had the words "of the district court" after the word "clerk."

275. *Commission to take testimony.*

SEC. 275. On the filing of such statement, the clerk must issue a commission, directed to two justices of the peace of his county, to meet at a time and place specified in the commission, not less than twenty nor more than thirty days from the date thereof, for the purpose of taking the depositions of such witnesses as the parties to the contest may wish to examine.

276. *Notice to person interested, by whom served.*

SEC. 276. Written notice of such contest, specifying the time and place of taking depositions, and a copy of the statement, certified by the clerk, must be delivered to the person whose election is contested, or if he cannot be found, left at the house where he last resided, by the sheriff of the county in which such person claims his residence, within ten days after such statement is filed.

277. *Compelling attendance of witnesses.*

SEC. 277. Either of the justices of the peace have power to issue subpoenas for witnesses, at the request of either party, to be served by the sheriff as other subpoenas; and such justices, when met at the time and place appointed to take such depositions, have the same power to issue attachments and assess fines against witnesses as is given to justices of the peace in the trials of civil actions.

278. *Testimony, how taken.*

SEC. 278. The justices must meet at the time and place appointed, and take the depositions of witnesses produced by the parties, and may continue the examination from day to day, if necessary. When the examination is closed, they must seal up the depositions taken before them, together with the commission, and transmit the same by mail or express to the clerk with whom the statement was filed.

279. *Vacancy in commission, how filled.*

SEC. 279. If at any time either of the justices is unable to proceed in such examination, the clerk may supply the vacancy by designating any other justice of the peace of the county.

280. *Fees of officers.*

SEC. 280. Officers performing services in a contested election case may charge and collect from the party at whose instance such services were performed the same fees as are allowed them for similar services in civil cases.

281. *Testimony to be transmitted to secretary of state.*

SEC. 281. The clerk must seal up the depositions, the original statement, the copy of the notice served upon the party whose right is contested, and the commission issued to the justices of the peace, and transmit the same by mail to the secretary of state, indorsing thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried. The secretary of state must deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the legislature next after taking such depositions, and such presiding officer must immediately give notice to the house that such papers are in his possession.

282. *Depositions.*

SEC. 282. At any time after notice of contest has been given, and before the trial thereof before the proper branch of the legislature, either party may take depositions, to be read on the trial, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on the trial of civil actions; and such depositions when taken, must be sealed up by the officer taking the same, and directed to the secretary of state, who must

keep the same, unopened, and deliver them to the presiding officer of the house in which the contest is to be tried.

283. *Further evidence may be taken.*

SEC. 283. The house before which the contest is pending may take such other evidence in the case as it deems material.

ARTICLE VII.

CONTESTING THE ELECTION FOR GOVERNOR OR LIEUTENANT-GOVERNOR.

288. *Who may contest.*

SEC. 288. Any elector of the state may contest the election of any person declared elected governor or lieutenant-governor of the State of California.

289. *Grounds of contest to be stated in petition.*

SEC. 289. Such elector may, within twenty days after the declaration of the result of the election, deliver to the presiding officer of each house of the legislature a verified specification of the grounds of contest.

290. *Notice to respondent.*

SEC. 290. As soon as the presiding officers have received the specifications they must make out a notice, in writing, directed to the person whose election is contested, and deliver the same to a sergeant-at-arms, who must serve such notice at once on the person therein named.

291. *Notice to houses.*

SEC. 291. The presiding officers must also immediately give notice to their respective houses that such specifications have been received.

292. *Trial committee, how chosen.*

SEC. 292. Each house must at once choose seven members of its own body, in the following manner:

1. The names of the members, except the speaker of the assembly, written on similar paper tickets, must be placed in a box;
2. The secretary of the senate, in the presence of the senate, and the clerk of the assembly, in the presence of the house, must draw from their respective boxes the names of seven members of each.

293. *Notice of choice.*

SEC. 293. As soon as the names are drawn, notice of the names of members drawn in one house must be given to the other, and the names of the fourteen members drawn must be entered on the journals of each house.

294. *Powers of committee.*

SEC. 294. The members thus selected constitute a committee to try such contested election, and for that purpose must hold their meetings publicly at the seat of government at such time and place as they may designate, and may adjourn from day to day, or to a day certain, until such trial is determined. They have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to each party to the contest. They must report their judgment in the premises to both houses of the legislature, which report must be entered upon the journals.

295. *Judgment of committee.*

SEC. 295. The judgment of the committee thus reported is final and conclusive.

ARTICLE VIII.

ATTENDANCE AND EXAMINATION OF WITNESSES BEFORE THE LEGISLATURE AND COMMITTEES
THEREOF.**300. Subpœnas.**

SEC. 300. A subpœna requiring the attendance of any witness before either house of the legislature or a committee thereof may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the assembly or senate or a committee;
2. It is addressed to the witness;
3. It requires the attendance of such witness at a time and place certain;
4. It is signed by the president of the senate, speaker of the assembly, or chairman of a committee.

301. Service of subpœnas.

SEC. 301. The subpœna may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness, is evidence of service. [*Amendment, approved March 30, 1874; Amendments 1873-4, 4; took effect July 6, 1874.*^(a)]

302. Contempt.

SEC. 302. If any witness neglects or refuses to obey such subpœna, or appearing, neglects or refuses to testify, the senate or assembly may, by resolution entered on the journal, commit him for contempt.

303. Compelling attendance.

SEC. 303. Any witness neglecting or refusing to attend in obedience to subpœna may be arrested by the sergeant-at-arms and brought before the senate or assembly. The only warrant or authority necessary to authorize such arrest is a copy of a resolution of the senate or assembly, signed by the president of the senate or speaker of the assembly, and countersigned by the secretary or clerk.

304. Witnesses not to be held to answer criminally—Refusal to testify.

SEC. 304. No person sworn and examined before either house of the legislature, or any committee thereof, can be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify; nor is any statement made or paper produced by any such witness competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

ARTICLE IX.

ENACTMENT OF STATUTES.

309. Bills received by governor to be indorsed by private secretary.

SEC. 309. Every bill must, as soon as delivered to the governor, be indorsed as follows: "This bill was received by the governor this——day of——, eighteen——." The indorsement must be signed by the private secretary of the governor.

(a) The original section had the word "might" instead of "may."

310. *Approval of bills.*

SEC. 310. When the governor approves a bill he must set his name thereto, with the date of his approval.

311. *Bills returned without approval.*

SEC. 311. When a bill has passed both houses of the legislature and is returned by the governor without his signature and with objections thereto, and upon a reconsideration passes both houses by the constitutional majority, it must be authenticated as having become a law by a certificate indorsed thereon or attached thereto in the following form: "This bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses by the constitutional majority, it has become a law this —— day of ——, A. D. ——," which indorsement, signed by the president of the senate and speaker of the assembly, is a sufficient authentication thereof. Such bill must then be delivered to the governor and by him must be deposited with the laws in the office of the secretary of state.

312. *Return, when house not in session.*

SEC. 312. If, on the day the governor desires to return a bill without his approval, and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session by message notifies it of such delivery, and of the time when, and the person to whom such delivery was made.

313. *Bills remaining with governor more than ten days.*

SEC. 313. Every bill which has passed both houses of the legislature, and has not been returned by the governor within ten days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state in the following form: "This bill having remained with the governor ten days (Sundays excepted), and the legislature being in session, it has become a law this —— day of ——, A. D. ——," which certificate must be signed by the secretary of state, and deposited with the laws in his office.

ARTICLE X.

PROMULGATION OF STATUTES.

318. *Publication and distribution of statutes.*

SEC. 318. The publication and distribution of statutes is provided for in Chapter III, Title I, Part III, of this Code. [See post, 409 and 526-537.]

ARTICLE XI.

OPERATION OF STATUTES.

323. *When statutes take effect.*

SEC. 323. Every statute, unless a different time is prescribed therein, takes effect on the sixtieth day after its passage.

324. *When joint resolutions take effect.*

SEC. 324. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

325. *Effect of amendment.*

SEC. 325. Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the

portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

326. Construction of statutes.

SEC. 326. The general rules for the construction of statutes are contained in the preliminary provisions of the different codes.

327. Repeal of statutes.

SEC. 327. Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

328. Act repealed not revived by repeal of repealing act.

SEC. 328. No act or part of an act, repealed by another act of the legislature, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

329. Repeal of laws creating criminal offenses, effect of.

SEC. 329. The repeal of any law creating a criminal offense does not constitute a bar to the indictment and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment and punishment is expressly declared in the repealing act.

330. Amendatory act, when void.

SEC. 330. An act amending a section of an act repealed is void.

ARTICLE XII.

PUBLIC REPORTS.

332. When state officers, etc., are to report.

SEC. 332. All officers, boards of officers, commissioners, trustees, regents, and directors, required by law to make reports to the governor or legislature, except the controller of state, must send such reports to the governor before the first day of August, in the year eighteen hundred and seventy-three, and in every second year thereafter.

333. Reports, printing of.

SEC. 333. The superintendent of state printing must print such reports before the last Monday in November next after the receipt thereof. [*Amendment, approved March 11, 1876; Amendments 1875-6, 9; took effect sixtieth day after passage.*^(a)]

334. Number to be printed.

SEC. 334. There must be printed:

- Of the report of the secretary of state, twelve hundred copies;
- Of the report of the controller of state, two thousand copies;
- Of the report of the state treasurer, two hundred and fifty copies;
- Of the report of the surveyor-general, two thousand five hundred copies;
- Of the report of the superintendent of public instruction, four thousand five hundred copies;
- Of the report of the attorney-general, one thousand copies;
- Of the report of the adjutant-general, six hundred copies;
- Of the report of the state librarian, six hundred copies;
- Of the report of the fish commissioners, twelve hundred copies;
- Of the report of the directors, resident physician, visiting physicians of the insane asylum, eighteen hundred copies;

(a) The original section had the words "state printer" instead of "superintendent of state printing."

Of the report of the directors of the state prison, eighteen hundred copies;
 Of the report of the insurance commissioner, eight hundred copies;
 Of the report of the state board of harbor commissioners, twelve hundred copies;
 Of the report of the regents of the university, twelve hundred copies;
 Of the report of the trustees of the asylum for the deaf, dumb, and blind, eight hundred copies;
 Of the report of the state board of equalization, two thousand copies;
 Of the report of the state board of health, one thousand copies;
 Of the report of the state agricultural society, one thousand copies;
 Of the report of the commissioners to manage the Yosemite Valley and Mariposa big tree grove, five hundred copies. [*Amendment, approved March 11, 1876; Amendments 1875-6, 9; took effect sixtieth day after passage.*]^(a)

335. *Distribution of reports.*

SEC. 335. The reports must be delivered by the superintendent of state printing as follows:

To the governor, fifty copies of each report;
 To the state librarian, ten copies of each report;
 To the secretary of state, thirty copies of each report;
 To the superintendent of public instruction, two thousand copies of his report, for distribution to school trustees and teachers, and for exchange with other states;
 To the surveyor-general, one thousand copies of his report, for distribution to the county surveyors, assessors, and county clerks of the several counties, and for exchange with other states;
 To the adjutant-general, two hundred and fifty copies of his report, to be distributed at his discretion;
 To the attorney-general, one hundred copies of his report, for distribution to the several district attorneys of the state;
 To the controller, two hundred copies of his report;
 To the secretary of state, two hundred copies of his report;
 To the state treasurer, one hundred copies of his report;
 To the state librarian, one hundred and fifty copies of his report;
 To the officers of each of the insane asylums, two hundred copies of their report;
 To the directors of the state prison, one hundred copies of their report;
 To the insurance commissioner, one hundred copies of his report;
 To the regents of the university, two hundred copies of their report;
 To the trustees of the asylum for the deaf, dumb, and blind, three hundred copies of their report;
 To the fish commissioners, two hundred copies of their report;
 To the state board of health, two hundred copies of their report;
 To the officers of the state agricultural society, two hundred copies of their report;
 To the commissioners to manage the Yosemite valley and the Mariposa big tree grove, one hundred copies of their report.

And the remaining copies thereof: one third to the order of the sergeant-at-arms of the senate, and two thirds to the order of the sergeant-at-arms of the assembly, to be by them distributed pro rata to the members of the senate and assembly next to convene.

(a) The original section provided for the following numbers of reports: secretary of state, 1200; controller, 2640; treasurer, 2160; surveyor-general, 5280; superintendent of public instruction, 5280; attorney-general, 1200; adjutant-general, 1200; state librarian, 1200; fish commissioners, 1200; insane asylum, 2400; state prison, 2400; state board of equalization, 2400; capitol com-

missioners, 1200; state board of harbor commissioners, 1200; regents of university, 2400; state agricultural society, 1200; deaf, dumb, and blind asylum, 1200; state board of health, 2400; insurance commissioner, 1000.

It was previously amended by act of March 30, 1874: Amendments 1873-4, 4, so as to omit the provision respecting the report of the insurance commissioner.

No report must contain more than one hundred pages of printed matter, except the report of the controller of state. [*Amendment, approved March 11, 1876; Amendments 1875-6, 11; took effect sixtieth day after passage.*^(a)

336. *To be printed in English.*

SEC. 336. All reports must be printed in the English language.

337. *Report of insurance commissioner to be printed and distributed.*

SEC. 337. Of the report of the insurance commissioner, the commissioner must have printed, at the expense of his office, one thousand copies, and must deliver of the same as follows:

To the governor, twenty copies;

To the state librarian, ten copies;

To the secretary of state, thirty copies;

To the sergeant-at-arms of the senate, eighty copies;

To the sergeant-at-arms of the assembly, one hundred and sixty copies;

And the residue must be distributed by the commissioner in furtherance of the interest of insurance. [*New section, approved March 30, 1874; Amendments 1873-4, 7; took effect July 6, 1874.*

CHAPTER III.

EXECUTIVE OFFICERS.

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ARTICLE I.

CLASSIFICATION, NUMBER, AND DESIGNATION OF EXECUTIVE OFFICERS.

341. *Classification of executive officers.*

SEC. 341. Executive officers are either:

1. Civil; or,
2. Military.

(a) The original section had the words "state printer" instead of "superintendent of state printing," and did not have the last sentence commencing with the words "no report must contain." It differed from the amendment in the text by providing that the superintendent of public instruction should have 2500 copies of his report; the adjutant-general 500 copies of his report; the state librarian 200 copies of his report; the trustees of the deaf, dumb, and blind asylum 500 cop-

ies of their report; the state board of equalization 200 copies of their report, and omitted the commissioners of the Yosemite Valley and Mariposa big tree grove.

It was previously amended by act of March 30, 1874; Amendments 1873-4, 5, so as to give to the state treasurer instead of the state librarian 10 copies of each report and to omit any provision for the insurance commissioner. In other respects that amendment was substantially the same as the original section.

342. Military officers.

SEC. 342. Military officers are designated and their duties prescribed in Title IV of Part III of this Code. [See post, 1895-2117.]

343. Designation and number of civil executive officers.

SEC. 343. The number and designation of the civil executive officers are as follows:

- A governor;
- A private secretary for the governor;
- An executive clerk for the governor;
- A lieutenant-governor;
- A secretary of state;
- A deputy secretary of state;
- A clerk for the secretary of state;
- Two recording clerks for the secretary of state;
- A general clerk for the secretary of state;
- Two special clerks for the secretary of state;
- A controller;
- A deputy controller;
- A bookkeeper for the controller;
- Five clerks for the controller.
- A treasurer;
- Two clerks for the treasurer;
- An attorney-general;
- A clerk for the attorney-general;
- A surveyor-general;
- A deputy surveyor-general;
- Three clerks for the surveyor-general;
- A register of the state land office;
- A deputy register of the state land office;
- Two clerks for the register;
- A superintendent of public instruction;
- A deputy for the superintendent of public instruction;
- A clerk for the superintendent of public instruction;
- A state printer;

[The office of state printer was abolished and that of "superintendent of state printing" created by act of March 26, 1872; 1871-2, 554. See post, 526.]

- A state geologist;
- A state sealer of weights and measures;
- An inspector of gas meters;
- A vaccine agent;
- A commissioner of immigration;
- An insurance commissioner;
- A deputy for the insurance commissioner;
- Three state capitol commissioners;
- Three tide land commissioners;
- Three members of the state board of tide land commissioners;

[The state board of tide land commissioners was abolished by act of February 4, 1876; see post, 365.]

- Four port wardens for the port of San Francisco;
- A port warden for each port of entry except San Francisco;
- Three state harbor commissioners;
- Three harbor commissioners for the port of Eureka;
- Six pilots for each harbor where there is no board of pilot commissioners;

Three members of the marine board for the port of San Francisco;

[The marine board was abolished by act of December 22, 1875. See post, 2583.]

Three members of the board of pilot commissioners for the ports of San Francisco, Mare Island, and Benicia.

Three members of the board of pilot commissioners for Humboldt bay and bar;

Three fish commissioners;

Five members of the board of health of San Francisco;

Five members of the board of health of Sacramento;

Seven members of the state board of health;

A president and nine directors of the state board of agriculture;

Three members of the state board of equalization;

Twenty-two regents of the university of California;

Ten members of the state board of education;

Seven trustees of the state normal school;

Five trustees of the state library;

A state librarian;

Two deputy state librarians;

A librarian of the supreme court library;

Three directors of the state prison;

Five directors of the insane asylum;

A medical superintendent of the insane asylum;

Three assistant physicians of the insane asylum;

A treasurer of the insane asylum;

Five trustees of the asylum for the deaf, dumb, and blind;

Three trustees of the state burying grounds;

Nine commissioners of the Yosemite valley and Mariposa big tree grove;

Three members of the board of examiners;

A clerk for the board of examiners;

Such other officers as fill offices created by or under the authority of the general laws for the government of counties, cities, and towns, or of the charters or special laws respecting the same, or of the health, school, election, road, or revenue laws.

ARTICLE II.

THE MODE OF ELECTION OR APPOINTMENT AND TERM OF OFFICE OF CIVIL EXECUTIVE OFFICERS.

348. *Certain officers elected.*

SEC. 348. The mode of election of the governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, and superintendent of public instruction is prescribed by the constitution.

349. *State printer.*

SEC. 349. The state printer is elected at the same time as the state officers mentioned in the preceding section, and holds his office for the term of four years from the first Monday in December next succeeding his election.

[The office of state printer was abolished and that of "superintendent of state printing" created by act of March 26, 1872; 1871-2, 554. See post, 526.]

350. *Register of land office.*

SEC. 350. The surveyor-general is ex officio register and the deputy surveyor-general is ex-officio deputy register of the state land office.

351. *State sealer of weights and measures.*

SEC. 351. The secretary of state is ex officio state sealer of weights and measures.

352. State board of equalization.

SEC. 352. The governor, controller, and attorney-general constitute the state board of equalization. The governor, and in his absence the controller, is chairman of the board. [*Amendment, approved April 1, 1876; Amendments 1875-61, 11; took effect immediately.*^(a)]

353. Regents of university.

SEC. 353. The governor, lieutenant-governor, speaker of the assembly, superintendent of public instruction, president of the state board of agriculture, and president of the mechanics' institute of San Francisco, are ex officio regents of the university of California. The appointment and terms of office of the other regents are provided for in Chapter I, Title III of Part III of this Code. [See post, 1425.]

354. Trustees of state normal school.

SEC. 354. The governor, superintendent of public instruction, and five trustees appointed by the governor, and holding their offices for the term of ten years, constitute the board of trustees of the state normal school.

355. State board of education.

SEC. 355. The appointment and terms of office of the members of the state board of education are provided for in Chapter III, Title III of Part III of this Code. [See post, 1517.]

356. Officers of libraries.

SEC. 356. The trustees of the state library, the state librarian, the deputy state librarian, and librarian of the supreme court, are elected and appointed and hold their offices as prescribed in Chapter III, Title V of Part III of this Code. [See post, 2292.]

357. Yosemite and Big Tree commissioners.

SEC. 357. The commissioners of the Yosemite valley and Mariposa big tree grove are appointed and hold their offices as prescribed in Title VIII of Part III of this Code. [See post, 3584.]

358. Superintendent, etc., of the insane asylum.

SEC. 358. The medical superintendent, assistant physicians, and treasurer of the insane asylum are elected, appointed, and hold their offices as prescribed in Chapter I, Title V of Part III of this Code. [See post, 2150.]

359. Directors of state board of agriculture.

SEC. 359. The president and directors of the state board of agriculture are elected and hold their offices as prescribed in the special statute creating the board.

360. San Francisco board of health.

SEC. 360. The members of the board of health of San Francisco are appointed and hold their offices as prescribed in Title VII, Part III of this Code. [See post, 3004.]

361. Sacramento board of health.

SEC. 361. The members of the board of health of Sacramento are appointed and hold their offices as prescribed in Title VII of Part III of this Code. [See post, 3042.]

362. Harbor commissioners.

SEC. 362. Harbor commissioners are elected and appointed and hold their offices as prescribed in Title VI of Part III of this Code. [See post, 2521.]

(a) Original section:

SEC. 352. The controller is ex officio a member of the state board of equalization. The other members are

appointed by the governor, and hold their offices at his pleasure.

363. [SEC. 363^(a) was repealed by act of January 13, 1876; Amendments 1875-6, 14; took effect immediately.]

364. *Board of examiners.*

SEC. 364. The governor, secretary of state, and attorney-general constitute the board of examiners.

365. *State board of tide land commissioners.*

SEC. 365^(b) was repealed by the following act of February 4, 1876:

An Act to abolish the state board of tide land commissioners and to repeal sections three hundred and sixty-five and six hundred and ninety eight of the political code.

Approved February 4, 1876; Amendments, 1875-6, 15.

SECTION 1. The State board of tide land commissioners is hereby abolished.

SEC. 2. All books, maps, papers, and documents belonging to the archives of said board and all other property of the state under its custody or control must be deposited with and kept and preserved by the surveyor-general of the state.

SEC. 3. Sections 365 and 698 of the Political Code are hereby repealed.

SEC. 4. An act entitled "An Act supplementary to and amendatory of 'An Act supplementary to and amendatory of an act entitled An Act to survey and dispose of certain salt marsh and tide lands belonging to the State of California,'" approved March 30, 1868; also, an act approved April 1, 1870; approved March 30, 1874, is hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

366. *State capitol commissioners.*

SEC. 366. The governor, secretary of state, and treasurer, constitute the board of state capitol commissioners.

367. *State prison directors.*

SEC. 367. The governor, lieutenant-governor, and secretary of state constitute the board of state prison directors; and the lieutenant-governor is warden of the state prison.

368. *Inspector of gas meters, etc.*

SEC. 368. The following executive officers are appointed by the governor, with the consent of the senate:

1. The inspector of gas meters; the trustees of the State burying grounds.

2. The directors of the insane asylum; the trustees of the asylum for the deaf, dumb, and blind; the port wardens; the insurance commissioner; the members of the state board of health; a vaccine agent.

3. The commissioner of immigration; the pilot commissioners; the pilots for each harbor where there is not a board of pilot commissioners; the fish commissioners; the state geologist; the tide land commissioners.

369. *Term of office of officers mentioned in preceding section.*

SEC. 369. The officers enumerated in the first subdivision of the last section hold their offices for the term of two years, those in the second subdivision for the term of four years, and those in the third subdivision during the governor's pleasure.

370. *Private secretary and clerk of governor.*

SEC. 370. The private secretary and executive clerk of the governor are appointed by him, and hold their offices at his pleasure.

(a) Repealed section:

SEC. 363. The members of the marine board of San Francisco are appointed and hold their offices as prescribed in Title VI of Part III of this code.

(b) Repealed section:

SEC. 365. The governor, surveyor-general, and controller constitute the state board of tide land commissioners.

371. *Deputies and clerks.*

SEC. 371. All deputies and clerks named in this article, whose appointments and terms of office are not otherwise provided for, are appointed by and hold office at the pleasure of their principals.

ARTICLE III.**OF THE GOVERNOR.****380. *Powers and duties of governor.***

SEC. 380. In addition to those prescribed by the constitution the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers;

2. He is to see that all offices are filled and the duties thereof performed, or in default thereof apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

3. He is to make the appointments and supply the vacancies mentioned in this code;

4. He is the sole official organ of communication between the government of this state and the government of any other state or of the United States;

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney-general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient;

6. He may require the attorney-general or district attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state;

7. He may require the attorney-general to aid any district attorney in the discharge of his duties;

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed or is charged with the commission of an offense punishable with death;

9. He must perform such duties respecting fugitives from justice as are prescribed by Chapter IV of Title XII of THE PENAL CODE; [See post, 14,547.]

10. He must issue and transmit election proclamations, as prescribed in Title II of Part III of this Code; [See post, 1041.]

11. He must issue land warrants and patents, as prescribed in Title VIII of Part III of this Code; [See post, 3395.]

12. He must, on or before the first day of September, in the year eighteen hundred and seventy-three, and in each second year thereafter, deliver to the state printer for publication all biennial reports of officers and boards for the two preceding years;

13. He may require any officer or board to make special reports to him, upon demand, in writing;

14. He may issue arms and accoutrements for the use of colleges;

15. He must discharge the duties of member of the board of examiners, of member of the state board of education, of state prison director, of state capitol commissioner, of orphan asylum commissioner, of trustee of state normal school, and of the board of military auditors;

16. He has such other powers, and must perform such other duties, as are devolved upon him by this code or any other law of this state.

381. *To transmit list of appointments to legislature.*

SEC. 381. Within ten days after the meeting of the legislature, the governor must transmit to it a list of all appointments made by him under the provisions of Section 1000.

382. *Records in office.*

SEC. 382. The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application;
2. A register of statements in capital cases made to him, with his action thereon;
3. An account of all his official expenses and disbursements, including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime;
4. A register of all appointments made by him, with date of commission, names of appointee and predecessor;
5. A record of all persons confined in the state prison, showing the name of the convict, his age and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires.

383. *Persons acting as governor.*

SEC. 383. Every provision in the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others toward him, extends to the persons performing for the time being the duties of governor.

384. *Salary of governor.*

SEC. 384. The annual salary of the governor is seven thousand dollars.

385. *Salary of private secretary.*

SEC. 385. The annual salary of the private secretary of the governor is twenty-four hundred dollars.

386. *Salary of clerk.*

SEC. 386. The annual salary of the executive clerk is twenty-four hundred dollars.

ARTICLE IV.

LIEUTENANT-GOVERNOR.

396. *Duties.*

SEC. 396. In addition to those prescribed by the constitution, the lieutenant-governor shall discharge the duties and exercise the powers of a state prison director.

397. *Compensation.*

SEC. 397. The lieutenant-governor receives a salary of twelve dollars per day during the session of the legislature, and the same mileage as is allowed to senators.

ARTICLE V.

OF THE SECRETARY OF STATE.

407. *Custody of records.*

SEC. 407. The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution;
2. Of all acts and resolutions passed by the legislature;
3. Of the journals of the legislature;
4. Of the great seal;

5. Of all books, records, deeds, parchments, maps, and papers, kept or deposited in his office pursuant to law.

408. *Duties of secretary of state.*

SEC. 408. In addition to that prescribed by the constitution, it is the duty of the secretary of state:

1. To attend at every session of the legislature, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two houses, or either of them;

2. To keep a register of and attest the official acts of the governor;

3. To affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

4. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office;

5. To receive and record in proper books the official bonds of all the officers whose bonds are fixed by Part III of this Code, and then to deliver the originals to the state treasurer.

6. To record in a proper book all changes of names certified to him by the county clerks, in the manner in which such record is now made;

7. To take and file in his office receipts for all books distributed by him, and to direct the county clerk of each county to do the same;

8. To certify to the governor the names of those persons who have received at any election the highest number of votes for any office the incumbent of which is commissioned by the governor;

9. To furnish on demand to any person paying the fees therefor a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

10. To deliver to the state printer, at the earliest day practicable after the final adjournment of each session of the legislature, copies of all laws, resolutions (with marginal notes), and journals, kept, passed, or adopted at such session; to superintend the printing thereof, and have proof sheets of the same compared with the originals, corrected, and indexed;

11. To furnish to the Spanish translator the laws and resolutions to be translated into Spanish;

12. To notify, in writing, the district attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer;

13. To present to the legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him in furnishing fuel, lights, and stationery;

14. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payor, paid or not paid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

15. To file in his office descriptions of the seals in use by the different state officers, and to furnish such officers with new seals whenever required;

16. To discharge the duties of director of the state prison; member of the state board of examiners, state capitol commissioner, state sealer of weights and measures, and all other duties required of him by law;

17. To report to the governor, at the time prescribed in section 332 of this code, a detailed account of all his official actions since his previous report, and accompany the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended.

409. *Distribution of statutes and journals.*

SEC. 409. Immediately after the laws, resolutions, and journals mentioned in subdivision 9 of the preceding section are bound, the secretary of state must distribute the same as follows:

1. To each department of the government at Washington, and of the government of this state, one copy;
2. To the library of congress, the state library, and to the supreme court library, two copies each;
3. To each of the states, two copies;
4. To each of our members of congress, and to each of the United States district judges, judges of the supreme, district, and county courts of this state, and to the municipal, criminal and probate courts of the city and county of San Francisco, one copy;
5. To the lieutenant-governor, each member of the legislature, secretary of the senate, and clerk of the assembly, at the session when such laws and journals were adopted, one copy;
6. To each of the incorporated colleges of the state, the university, and to such other literary and scientific institutions as in his opinion may secure an interchange of works, one copy;
7. Of the laws alone, to the county clerk of each county, in the cheapest and most expeditious manner, to be by the sheriff distributed under the directions of the clerk, one copy for the board of supervisors, one copy to each county officer and each justice of the peace; and of the journals, three copies of each house to each county clerk, for the use of the county.

410. *Distribution of reports of supreme court.*

SEC. 410. He must distribute of the bound volumes of the decisions of the supreme court, as soon as he receives them:

1. To each state, one copy;
2. To the library of congress, the state library, and the supreme court library, two copies each;
3. To each department of this state, and to each of the United States district judges for this state, supreme, district, and county judges, and the judges of the municipal, criminal, and the probate courts of the city and county of San Francisco, one copy;
4. To each district attorney and county clerk, one copy;
5. To the reporter of the decisions, ten copies.

411. *To mark books distributed.*

SEC. 411. The secretary of state must indelibly mark each book distributed to officers in this state (except legislative officers and the reporter) with the name of the county to which and the official designation of the officer to whom it is sent. Such books remain the property of the state, and must be by the officers receiving them delivered to their successors.

412. *To superintend and take charge of capitol.*

SEC. 412. The secretary of state is the superintendent and has charge of the state capitol, and he must keep the same, together with all property therein, in good order and repair.

413. *To furnish fuel and stationery.*

SEC. 413. Fuel, lights, and stationery for the senate and assembly, supreme court, and state and supreme court libraries, and for all officers having their offices or chambers in the state capitol, must be furnished by the secretary of state.

414. *Expenses for fuel, etc., how paid.*

SEC. 414. The expenses incurred by him in carrying into effect the provisions of sections 409, 410, 412, and 413, must be audited by the board of examiners and paid out of any moneys specially appropriated for that purpose.

415. *Translation of laws into Spanish, etc.*

SEC. 415. The translation of the laws into Spanish, and their distribution, is under the control of the secretary of state, as follows: During the month of December of each legislative year he must advertise for proposals for the translation into Spanish of such laws as may be authorized by the legislature. The proposals received must be opened on the first Monday in February thereafter, in the presence of a joint committee of both houses of the legislature, who must, within ten days thereafter, award the contract to the lowest competent bidder; but not more than seventy-five cents per folio of one hundred words must be paid for translating, preparing the index, and correcting the proof sheets for the printer, all of which must be done by the translator within three months from the time he is furnished with the copy. The Spanish laws must be distributed in the same manner as laws printed in English, to the counties of San Diego, San Bernardino, Los Angeles, Santa Barbara, San Luis Obispo, Monterey, Santa Clara, Contra Costa, Alameda, Marin and Sonoma, and one copy must be sent to each of the district judges of the first, third, and seventh districts. Before entering on his duties the translator must take an oath for the faithful and correct translation of the laws and joint and concurrent resolutions as herein ordered, and give bond, with two good and sufficient sureties, in the sum of five thousand dollars penalty, to be approved by the secretary of state, conditioned for the entire, correct and complete translation and service to be done as herein provided; and his account for such services, when certified by the secretary of state, must be submitted to the board of examiners, and when allowed, audited by the controller and paid by the treasurer of state.

416. *Fees.*

SEC. 416. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.
2. For affixing certificate and seal of state, two dollars.
3. For filing articles of incorporation, five dollars.
4. For recording articles of incorporation, twenty cents per folio.
5. For issuing each certificate of incorporation, three dollars.
6. For receiving and recording each official bond, five dollars.
7. For each commission, passport, or other document signed by the governor and attested by the secretary of state (pardons excepted), five dollars.
8. For each patent for land issued by the governor, if for less than one hundred and sixty acres, one dollar; and for each additional one hundred and sixty acres, or fraction thereof, one dollar.

For searching records and archives of the state, one dollar.

But no member of the legislature or state officer can be charged for any search relative to matters appertaining to the duties of their offices; nor must they be charged any fee for a certified copy of any law or resolution passed by the legislature relative to their official duties. All fees collected by him must be paid into the state treasury at the end of each month, and constitute the state library fund.

417. *Salary of secretary.*

SEC. 417. The annual salary of the secretary of state is four thousand dollars.

418. *Salary of deputy.*

SEC. 418. The annual salary of the deputy secretary of state is twenty-four hundred dollars.

419. *Salary of clerk.*

SEC. 419. The annual salary of the clerk for the secretary of state is twenty-four hundred dollars.

420. *Salary of recording clerks.*

SEC. 420. The annual salary of each recording clerk for the secretary of state is eighteen hundred dollars.

421. *Salary of general clerk.*

SEC. 421. The annual salary of the general clerk for the secretary of state is eighteen hundred dollars.

422. *Salary of special clerks.*

SEC. 422. The secretary of state during each legislative year, from January until July, inclusive, may employ two special clerks at a monthly salary not exceeding one hundred and fifty dollars each.

423. *Official bond.*

SEC. 423. The secretary of state must execute an official bond in the sum of ten thousand dollars.

ARTICLE VI.**CONTROLLER.****433. *General duties.***

SEC. 433. It is the duty of the controller:

1. To superintend the fiscal concerns of the state;
2. To report to the governor, on the second Monday in October next preceding each regular session of the legislature, a statement of the funds of the state, its revenues, and of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriations and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed;
3. To accompany his biennial report with tabular statements, showing: 1. The amount of each appropriation for the two preceding fiscal years, the amounts expended, and the balance, if any; 2. The amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom;
4. When requested, to give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office;
5. To suggest plans for the improvement and management of the public revenues;
6. To keep and state all accounts in which the state is interested;
7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation;
8. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him;
9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applica-

ble to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered;

10. To audit all claims against the state in cases where there is [are] sufficient provisions of law for the payment thereof;

11. To examine and settle the accounts of all persons indebted to the state, and to certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor to give such person a discharge and charge the treasurer therewith;

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it;

13. To require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts;

14. In his discretion to inspect the books of any person charged with the receipt, safe keeping, or disbursement of public moneys;

15. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require;

16. To direct and superintend the collection of all moneys due the state, and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the state; of which suits the courts of Sacramento county have jurisdiction, without regard to the residence of the defendants;

17. To draw warrants on the treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof;

18. To furnish the state treasurer with a list of warrants drawn upon the treasury;

19. To have printed and forwarded to the auditor of each county blank state licenses;

20. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office;

21. To perform the duties of a member of the state board of equalization, and of the state board of tide land commissioners, and such other duties as are prescribed by law.

434. *Certificate of settlement.*

SEC. 434. The certificate mentioned in subdivision 11 of section 433 must show by whom the payment is to be made, the amount thereof, and the funds into which it is to be paid, and must be numbered in order, beginning with number one at the commencement of each fiscal year.

435. *Special duties connected with school fund.*

SEC. 435. The controller must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must, on the first day of February and on the first day of August of each year, report to the

superintendent of public instruction a statement of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment, and the several sources from which they accrued. He must draw his warrant on the state treasurer in favor of any county treasurer whenever such county treasurer presents, with his indorsement, an order drawn by the superintendent of public instruction in favor of such county, and the warrant so drawn is not subject to the provisions of Article XVIII of this chapter.

436. Order in which warrants must be drawn.

SEC. 436. All warrants for claims which have been audited by the board of examiners, and filed in his office, must be drawn in the order of the numbers placed upon them by that board.

437. Proceedings against defaulters.

SEC. 437. Whenever any person has received moneys, or has money or other personal property which belongs to the state by escheatment or otherwise, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to, and make settlement with the controller within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the controller, within twenty days after such requisition, the controller must state an account with such person, charging twenty-five per cent. damages, and interest at the rate of ten per cent. per annum from the time of failure; a copy of which account in any suit therein is *prima facie* evidence of the things therein stated. But in case the controller cannot for want of information state an account, he may, in any action brought by him, aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the state. [*Amendment, approved March 30, 1874; Amendments 1873-4, 7; took effect July 6, 1874.*^(a)]

438. Salary.

SEC. 438. The annual salary of the controller of state is four thousand dollars.

439. Salary of deputy controller.

SEC. 439. The annual salary of the deputy controller is three thousand dollars.

440. Salary of bookkeeper.

SEC. 440. The annual salary of the bookkeeper for the controller is twenty-four hundred dollars.

441. Salary of clerks.

SEC. 441. The annual salary of each clerk in the controller's office is eighteen hundred dollars.

442. Official bond.

SEC. 442. The controller must execute an official bond in the sum of fifty thousand dollars.

443. Controller to make annual estimate for school expenses.

SEC. 443. The state controller must, between the tenth day of August and the first day of September of each year, estimate the amount necessary to raise the sum of seven dollars for each census child, between the ages of five and

(a) The original section did not have the words "or has money or other personal property which belongs to the state by escheatment or otherwise;" nor the words "or who fails to pay into the state treasury any moneys belonging to the state;" nor the last sentence of the above amendment. It had the word "primary" instead of "*prima facie*."

seventeen years, in this state, which shall be the amount necessary to be raised by ad valorem tax for school purposes during the year; which amount the controller must immediately certify to the state board of equalization. [*New section, approved March 13, 1874; Amendments 1873-4, 84; took effect from passage.*]

[The following special acts in relation to the duties of the controller, passed since the adoption of the codes, may be referred to:

An act to authorize the controller of state to issue duplicate warrants (in favor of trustees of state normal school and O. P. Fitzgerald), approved January 26, 1872; 1871-2, 38; repealed in part by act of March 23, 1872; 1871-2, 537.

An act to provide for the return to the state treasury and cancellation of certain controller's warrants (drawn upon funds of swamp land districts and received in payment of swamp lands), approved March 23, 1874; 1873-4, 519.

An act to authorize the state controller to issue a duplicate warrant (to Friend & Terry), approved March 25, 1874; 1873-4, 606.

An act to authorize the controller of state to issue duplicate warrants (to Jackson Wilcoxson), approved March 26, 1874; 1873-4, 620.

An act authorizing the controller of state to credit certain counties with the amounts of old balances due the state, approved March 30, 1874; 1873-4, 802.

An act to provide for the payment of certain controller's warrants, approved March 30, 1874; 1873-4, 864.]

ARTICLE VII.

TREASURER.

452. *General duties.*

SEC. 452. It is the duty of the treasurer;

1. To receive and keep in the vaults of the state treasury all moneys belonging to the state not required to be received and kept by some other person;

2. To file and keep the certificates of the controller delivered to him when moneys are paid into the treasury;

3. To deliver to each person paying money into the treasury a receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year;

4. To pay warrants drawn by the controller out of the funds upon and in the order in which they are drawn;

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same;

6. To keep an account of all moneys received and disbursed;

7. To keep separate accounts of the different funds;

8. To report to the controller, on the last day of each month, the amount disbursed for redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund;

9. At the request of either house of the legislature, or of any committee thereof, to give information in writing as to the condition of the treasury or upon any subject relating to the duties of his office;

10. To report to the governor at the time prescribed in section 332 of this code, the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years;

11. To authenticate with his official seal all writings and papers issued from his office;

12. To discharge the duties of state capitol commissioner, and such other duties as may be imposed upon him by law.

453. Limitations upon receipt and payment of money.

SEC. 453. He must receive no money into the treasury unless accompanied by the certificate of the controller provided for in sections 433 and 434 of this code, and must pay none out upon warrants issued for indebtedness accruing prior to January first, eighteen hundred and fifty-seven.

454. General fund.

SEC. 454. The general fund consists of moneys received into the treasury and not specially appropriated to any other fund.

455. Salary of treasurer.

SEC. 455. The annual salary of the state treasurer is four thousand dollars.

456. Salary of clerk.

SEC. 456. The annual salary of one clerk in the treasurer's office is twenty-four hundred dollars; of the other clerk eighteen hundred dollars.

457. Watchmen, appointment and salary.

SEC. 457. The treasurer may employ two watchmen, at an annual salary each of twelve hundred dollars.

458. Watchmen, powers and duties.

SEC. 458. The watchmen must be alternately on duty at all hours of the day and night, and have the same power to make arrests as is by THE PENAL CODE conferred upon peace officers.

459. Official bond of treasurer.

SEC. 459. The treasurer must execute an official bond in the sum of one hundred thousand dollars.

ARTICLE VIII,

ATTORNEY-GENERAL.

470. General duties.

SEC. 470. It is the duty of the attorney-general:

1. To attend the supreme court and prosecute or defend all causes to which the state or any officer thereof, in his official capacity, is a party, and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity;

2. After judgment in any of the causes referred to in the preceding section, to direct the issuing of such process as may be necessary to carry the same into execution;

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;

4. To keep a docket of all causes in which he is required to appear, which must during business hours be open to the inspection of the public, and must show the county, district, and court in which the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and, when prosecuted to judgment, a memorandum of the judgment; of any process issued thereon, and whether satisfied or not, and if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention;

5. To exercise supervisory powers over district attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge;

6. To give his opinion in writing, without fee, to the legislature or either

house thereof, and to the governor, the secretary of state, controller, treasurer, surveyor-general, the trustees or commissioners of state institutions, and any district attorney, when required, upon any question of law relating to their respective offices;

7. When required by the public service, or directed by the governor, to repair to any county in the state and assist the district attorney thereof in the discharge of his duties;

8. To bid upon and purchase, in the name of the state and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases;

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purpose;

10. When in his opinion it may be necessary for the collection or enforcement of any judgment herein before mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents;

11. To discharge the duties of a member of the board of examiners, of the board of military auditors, and other duties prescribed by law;

12. To report to the governor, at the time required by section 332 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from district attorneys.

471. *Salary.*

SEC. 471. The annual salary of the attorney-general is four thousand dollars.

472. *Salary of clerk.*

SEC. 472. The annual salary of the clerk for the attorney-general is eighteen hundred dollars.

473. *Official bond.*

SEC. 473. The attorney-general must execute an official bond in the sum of ten thousand dollars.

474. *Duty as to escheats—Suits and counsel.*

SEC. 474. It shall be the duty of the attorney-general to institute investigation for the discovery of all real and personal property which may have or should escheat to the state, and for that purpose shall have full power and authority to cite any and all persons before any of the probate courts of this state, to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property shall be discovered which should escheat to the state, the attorney-general must institute suit in the district court where said property shall be situated, for the recovery, to escheat the same to the state. The proceedings in all such actions shall be those provided for in Title VIII, Part III, Code of Civil Procedure. The attorney-general may, for the purposes and objects of this section, employ counsel to act in his place and stead for the discovery and recovery of both personal and real property, and in such proceedings, both in investigation for discovery or proceedings for recovery, such

counsel so employed shall have the power and authority of the attorney-general. The compensation for services of such counsel shall be determined by the board of examiners, and paid out of the sums so found to be escheated and recovered to the state, and not otherwise; provided, that the State of California shall in no case be responsible for any charges for attorney fees for suits prosecuted under this act, but the attorney-general is hereby authorized to pay to the person or persons discovering the same the costs and charges of prosecuting any suit or suits under this act a sum not in any case exceeding ten per cent. of the sums actually received as provided in this act. [*New section, approved April 1, 1876; Amendments 1875-6, 15; took effect from passage.*]

ARTICLE IX.

SURVEYOR-GENERAL.

483. *General duties.*

SEC. 483. It is the duty of the surveyor-general:

1. To discharge the duties relating to the public lands imposed upon him by Title VIII of Part III of this Code. [See post, 3395, 3574.]

2. When required, to survey and mark the boundary-lines of counties, cities, villages and towns;

3. To report to the governor at the time prescribed in section 332 of this code: 1. A statement of the progress made in the execution of the surveys enjoined on him by law; 2. An estimate of the aggregate quantity of land belonging to the state, and the best information he may be able to obtain as to the characteristics of the same; 3. An estimate of the aggregate quantity of all land used for or adapted to tillage and grazing within each county of the state; 4. An estimate of the number of horses, cattle, sheep, and swine, within each county of the state; 5. An estimate of the quantity of wheat, rye, corn, potatoes, grapes, and other agricultural and horticultural productions of the two preceding years, together with his views as to the presence, cause, and remedy of any diseases or other malady preventing full and perfect productions; 6. An estimate of the quantity of all mineral lands within each county of the state, and the quantity and value of each mineral produced during the two preceding years, together with a description of the localities in which such minerals may be found; 7. All facts in his opinion calculated to promote the development of the resources of the state;

4. To require county surveyors and assessors to collect and transmit to him, at such times as he may direct, information relative to the subject-matter of his biennial reports;

5. To authenticate with his official seal all writings and papers issued from his office;

6. To perform such other duties as may be required of him by law.

484. *Salary.*

SEC. 484. The annual salary of the surveyor-general is two thousand dollars.

485. *Salary of deputy surveyor-general.*

SEC. 485. The annual salary of the deputy surveyor-general is twenty-four hundred dollars.

486. *Salary of clerk.*

SEC. 486. The annual salary of each clerk in the office of the surveyor-general is eighteen hundred dollars.

487. *Official bond.*

SEC. 487. The surveyor-general must execute an official bond in the sum of ten thousand dollars.

ARTICLE X.

REGISTER OF THE STATE LAND OFFICE.

497. Register and deputy.

SEC. 497. The surveyor-general is ex officio register, and the deputy surveyor-general is ex officio deputy register, of the state land office.

498. Duties of register.

SEC. 498. The duties of [the] register are prescribed in Title VIII of Part III of this Code. [See post, 3395-3574.]

499. Salary.

SEC. 499. The annual salary of the register is two thousand dollars.

500. Salary of clerks.

SEC. 500. The annual salary of each clerk in the register's office is eighteen hundred dollars.

501. Fees of register.

SEC. 501. The register must charge and collect fees as follows: For each certificate of purchase, duplicate or patent, three dollars; for certifying a contested case to district court, three dollars; for copies of papers in his office, ten cents per folio, and fifty cents for the certificate with the seal attached; and such other fees as may be allowed by law. All fees received by the register must be disposed of as provided in Title VIII of Part III of this code. [See post, 3574.]

502. Official bond.

SEC. 502. The register must execute an official bond in the sum of ten thousand dollars.

ARTICLE XI.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

512. Duties.

SEC. 512. The duties of the superintendent of public instruction are prescribed in Title III of Part III of this Code. [See post, 1532.]

513. Salary.

SEC. 513. The annual salary of the superintendent is three thousand dollars.

514. Salary of deputy.

SEC. 514. The annual salary of the deputy for the superintendent is eighteen hundred dollars.

515. Salary of clerk.

SEC. 515. The annual salary of the clerk for the superintendent is fifteen hundred dollars.

516. Traveling expenses.

SEC. 516. The actual traveling expenses of the superintendent, not exceeding fifteen hundred dollars annually, must be audited by the board of examiners and paid out of the general fund in the state treasury.

517. Official bond.

SEC. 517. The superintendent must execute an official bond in the sum of ten thousand dollars.

ARTICLE XII.

STATE PRINTER.

526. Superintendent of state printing—Duties.

SEC. 526. It is the duty of the superintendent of state printing;

1. To print the laws, the journals of the legislature, reports of state officers,

public documents ordered to be printed by the legislature, blanks for the supreme court, the offices of governor, secretary of state, controller, treasurer of state, superintendent of public instruction, attorney-general, surveyor-general, and register of the land office, the bills, resolutions, and other job printing which may be ordered by either of the two houses of the legislature, and other public printing for the state, unless otherwise expressly ordered by law.

2. To publish, prefixed to each volume of the laws, the names and place of residence of the governor and other executive officers of the state, lieutenant-governor, senators and representatives in the legislature, the presiding officers of the senate and assembly, and of commissioners of the State of California residing out of the state and in office at the time of such publication.

3. To perform the duties required by the provisions of Article XII, Chapter II, Title I, Part III of this Code, and such other duties as are imposed upon him by law.

4. He shall keep in his office, open to public inspection, a time-book, containing the name of every employee connected with the state printing office, the time employed, the rate of wages, and amount paid; and he shall certify under oath to the correctness of all claims for services rendered and materials furnished, which certificate shall be attached to and presented with each claim that shall be presented to the board of examiners for allowance, and no such claim shall be certified or allowed unless it be fully itemized.

5. He shall file in the office of the secretary of state all proposals, bids, contracts, bonds and other papers appertaining to the awarding of contracts, now in his possession, or which may hereafter come into his possession, retaining in his office copies of the same; and the secretary of state shall promptly furnish the board of examiners, for their use, certified copies of all such papers.

6. All printing required by any of the state departments, boards, or any state officer for the state, the order for the same shall be made out upon a printed blank with voucher attached, to be furnished by the superintendent of state printing, and forwarded to the office of said superintendent, who shall enter upon a book kept in his office for that purpose, a transcript of said orders; and shall return with the work, when completed, to the person ordering the same, the original order with duplicate voucher attached, said voucher to be signed by the person receiving the work, and returned to the superintendent of state printing, and both original and duplicate orders shall be kept on file in his office, and shall be sufficient voucher for said work. The superintendent of state printing shall enter upon a book to be kept for said purpose, the name, quantity and weight of paper used for each order printed. He shall also certify under oath, that all materials, stock and paper furnished the office under contracts, are of the quality, kind and weight required by such contracts; and no claim arising under any contract shall be allowed or paid unless accompanied by such certificate. He shall also retain and file in his office one copy or sample of each blank, circular, pamphlet, book, legislative bill, file or report, or any other work emanating from the state printing office, excepting blank books, of which he shall file only sample sheets; said copies or samples shall bear a uniform number and date with the voucher. [*Amendment, approved April 3, 1876; Amendments 1875-6, 16; took effect from passage.*^(a)]

(a) The original section had the word "state printer" instead of "superintendent of state printing." It did not have the fourth, fifth or sixth subdivision; the above third was fourth, and there was a third subdivision as follows:

"3. To furnish to each citizen who may apply therefor, a copy of the laws of each session of the legislature, at a price not exceeding three dollars for bound and two dollars for unbound copies."

The original section had been superseded by "An Act to establish a state printing office and to create the office of superintendent of state printing," approved March 26, 1872; 1871-2, 554. That act was repealed by the act containing the above amendment. See post, 538.

527. Number of documents to be printed.

SEC. 527. Whenever any message or document, in book form, is ordered printed by either house, four hundred and eighty copies thereof, in addition to the number ordered, must be struck off and retained in sheets, and bound with the journals of the house ordering the same, as an appendix. Of bills ordered printed, when the number is not fixed in the order, there must be printed two hundred and forty copies.

528. Laws and journals to be printed.

SEC. 528. There must be printed of the laws of each session of the legislature, twenty-two hundred and fifty copies in English, to be deposited with the secretary of state, who, after retaining a sufficient number of said volumes for distribution, in accordance with the provisions of section 409 of the Political Code, shall deposit one hundred and fifty copies with the state librarian; the remaining copies to be sold at a price not to exceed three dollars per bound volume; the moneys thus received to be paid into the state treasury at the end of each month, as other fees are paid by the said secretary of state, and for the same purposes; and of such laws, resolutions, and memorials as may be designated by the legislature, two hundred and forty copies in Spanish. Of the journals of the senate and assembly, there must be printed four hundred and eighty copies, in one volume or two, as may be required by the size thereof. The appendices to the journals of both houses must be printed in one volume. [*Amendment, approved April 3, 1876; Amendments 1875-6, 17; took effect from passage.*]^(a)

529. Manner of printing.

SEC. 529. Printing must be done as follows:

The laws, journals, messages, and other documents in book form must be printed solid, with long primer type, on good white paper; each page, except of the laws, must be thirty-three ems wide and fifty-eight ems long, including title, blank line under it, and foot line; of the laws the same length, and twenty-nine ems wide, exclusive of marginal notes, which notes must be printed in nonpareil type, seven ems wide. Figure work, and rule and figure work, in messages, reports, and other documents in book form, must be on pages corresponding in size with the journals, if it can be brought in by using type not smaller than minion; if not, it must be executed in a form to fold and bind with the volume. Bills and other work of a similar character must be printed with long primer type, on white plain cap paper, commencing the heading one fourth of the length of the sheet from its top, and be forty-six ems wide and seventy-three ems long, including running head, blank line under it, and foot line, and between each printed line there must be a white line corresponding with the body of the type, and each line must be numbered. Blanks must be printed in such form and on such paper and with such sized type as the officers ordering them may direct. The laws must be printed without chapter headings, and without blank lines, with the exception of one head line, one foot line, two lines between the last section of an act and the title of the next act. When there is not space enough between the last section of an act to print the title and enacting clause, and one line of the following act upon the same page, such title may be printed upon the following page. The journals must be printed without blank lines, with the exception of one head line, one foot line,

(a) Original section:

SEC. 528. There must be printed of the laws, resolutions and memorials of each session of the legislature, one thousand six hundred and eighty copies in English; and of such laws, resolutions and memorials as may be designated by the legislature, two hundred and forty copies in Spanish. Of the journals of the senate

and assembly, there must be printed four hundred and eighty copies in one volume or two, as may be required by the size thereof. The appendices to the journals of both houses must be printed in one volume; the same matter must not be twice printed. All printing must be done within this state.

and two lines between the journal of one day and that of the following day. In printing the ayes and noes, the word "ayes" and the word "noes" must be run in with the names.

530. Appointment, qualifications, and bond of superintendent of state printing.

SEC. 530. The superintendent of state printing shall be appointed and commissioned by the governor of the state, and shall hold office during the pleasure of the governor, and until his successor is appointed and qualified; he shall be a competent practical printer, and before entering upon the discharge of the duties of his office, shall give a good and sufficient bond to the people of the State of California, in the sum of ten thousand dollars, with two or more sureties, to be approved by the governor, for the faithful performance of his duties, which bond shall be filed in the office of the secretary of state. The present superintendent of state printing may hold the position without a re-appointment or the giving of a new bond, and his said appointment and bond shall be held and treated as if made and given under this act, and be subject to all its provisions; and the office of superintendent of state printing heretofore created, is hereby continued under this act. [*Amendment, approved April 3, 1876; Amendments 1875-6, 18; took effect from passage.*^(a)]

531. Duties of superintendent of state printing.

SEC. 531. The duties of the superintendent of state printing shall be as follows: He shall have the entire charge and superintendence of state printing. He shall take charge of and be responsible on his bond for all manuscripts and other matter which may be placed in his hands to be printed, engraved, or lithographed, and shall cause the same to be promptly executed. He shall receive from the senate or assembly all matter ordered by either house to be printed and bound, or either printed or bound, and shall keep a record of the same, and of the order in which it may be received, and when the work shall have been executed he shall deliver the finished sheets or volumes to the sergeant-at-arms of the senate or assembly, or of any department authorized to receive them, whose receipts therefor shall be a sufficient voucher to the said superintendent of state printing for their delivery. He shall receive and promptly execute all orders for printing required to be done for the various state officers. He shall employ such compositors, pressmen, and assistants as the exigency of the work from time to time requires, and may at any time discharge such employees; provided, that at no time shall he pay said compositors, pressmen, or assistants, a higher rate of wages than is paid by those employing printers in Sacramento for like work. He shall at no time employ more compositors or assistants than the absolute necessities of the state printing may demand, and he shall not permit any other than state work to be done in the state printing office. The superintendent of state printing shall, on or before the first day of September of each year, make a report in writing to the governor, embracing a record of the complete transactions of his office, which report shall show in detail all the items of expense attending the state printing, and all the expenses of the office, including repairs, and the purchase of materials of all kinds; said report shall also state the number of reams and various kinds of paper delivered to him, and the amount and quality remaining on hand, which report shall be printed for the use of the legislature. [*Amendment, approved April 3, 1876; Amendments 1875-6, 18; took effect from passage.*^(a)]

(a) The original sections 530, 531, 532, 533, 534, 535, 536 and 537 related to the compensation of the state printer. They were superseded by "An Act to establish a state printing office and to create the office of superintendent of state printing," approved March 26, 1872; 1871-2, 554. This act was repealed by the act contain-

ing the amendments to the above-named sections. See section 538.

As the original sections throw no light upon the amendments, and are consequently unimportant, they are omitted.

532. *Paper, how to be supplied.*

SEC. 532. In July of each year the superintendent of state printing shall submit to the state board of examiners samples of the various kinds, sizes, and qualities of paper that will probably be required in his office during the year commencing on the then next first Monday in October, an estimate of the probable quantity of each kind, size, and quality that will be so required. Upon being satisfied that the kinds, sizes, quantities, and qualities of paper so suggested will be required, they shall direct the superintendent of state printing to advertise for thirty days in one daily newspaper published in the city of San Francisco, one in New York city, and one daily newspaper published in the city of Sacramento, for proposals to furnish such paper, or so much thereof as may be required during the year commencing as aforesaid, which bids shall be opened in his office at twelve o'clock m. on the day appointed, in the presence of the said superintendent and at least two of the state board of examiners; and the state board of examiners and the said superintendent of state printing shall constitute a board to award the contract to the lowest responsible bidder. No bid shall be considered unless accompanied by a certified check in the sum of two thousand dollars, gold coin, payable to the governor for the use of the people of the State of California, conditioned that if the bidder receives the award of the contract he will, within thirty days, enter into bonds in the sum of ten thousand dollars, with two or more sureties, to be approved by the governor of the state, that he will faithfully perform the conditions of his contract. All bids must be for the furnishing and delivery of the paper and materials at the state printing office in the city of Sacramento, so that the state shall not be charged with any cost of transportation or delivery, which must be specified in the advertisement for bids. If all the bids opened shall be deemed too high by said board, they may decline them and advertise again. If the second set of bids are considered too high, the said board may again decline them, and may purchase said paper in open market. The prices paid by the board shall in no case be higher than the lowest price at which such paper was offered to be furnished by the bids so rejected. [*Amendment, approved April 3, 1876; Amendments 1875-6, 19; took effect from passage.*]^(a)

533. *Ruling, folding, binding, etc.*

SEC. 533. All ruling, folding, and folding and stitching, and binding required to be executed for the state, shall be done under the supervision of said superintendent. He shall advertise for thirty days in one daily newspaper published in the city of San Francisco, and one daily newspaper published in the city of Sacramento, specifying the character of the binding, folding, and stitching to be bid upon, for proposals to do all such folding, folding and stitching, ruling and binding, all of which work shall be done in the city of Sacramento, and on the day appointed he shall, in the presence of the board of examiners, open the bids that may be received, and said superintendent of state printing and said board of examiners shall award said contract to the lowest responsible bidder or bidders therefor. [*Amendment, approved April 3, 1876; Amendments 1875-6, 20; took effect from passage.*]^(a)

534. *Salary.*

SEC. 534. The superintendent of state printing shall receive a salary of twenty-four hundred dollars per annum, payable monthly, out of any money in

(a) The original sections 530, 531, 532, 533, 534, 535, 536 and 537 related to the compensation of the state printer. They were superseded by "An Act to establish a state printing office and to create the office of superintendent of state printing," approved March 26, 1872; 1871-2, 554. This act was repealed by the act contain-

ing the amendments to the above-named sections. See section 538.

As the original sections throw no light upon the amendments, and are consequently unimportant, they are omitted.

the general fund not otherwise appropriated. [*Amendment, approved April 3, 1876; Amendments 1875-6, 20; took effect from passage.*^(a)

535. Appropriation for repairs of machinery.

SEC. 535. Whenever any appropriation is made for the support of the state printing office, a sum not exceeding one thousand dollars thereof shall be applied, when necessary, to and used for the purpose of repairing the present and purchasing new machinery of the state printing office, in each fiscal year for which the appropriation is made. [*Amendment, approved April 3, 1876; Amendments 1875-6, 20; took effect from passage.*^(a)

536. Appropriation for contingent expenses, etc.

SEC. 536. Whenever any money is appropriated for the support of the state printing office, a sum not exceeding the sum of one thousand dollars thereof shall, in each fiscal year for which the appropriation is made, be applied to and used for the purpose of paying wages to employees temporarily employed, when the amount due any employee shall be for less than a week's work, and other contingent expenses of the state printing office. The superintendent of printing shall keep an itemized account of all expenditures chargeable against the sum of money mentioned in this and the next preceding section, and none of said money shall be drawn from the treasury except upon the warrant of the controller. The controller, so long as there is any of the money remaining in any one year in the treasury, upon the presentation to him of an itemized claim verified by the oath of the superintendent of printing, shall draw his warrant on the treasurer for the same, specifying in said warrant that it is payable out of the fund provided in this or the preceding section, and the treasurer shall pay the same on presentation. [*Amendment, approved April 3, 1876; Amendments 1875-6, 21; took effect from passage.*^(a)

537. Payment of wages and salaries.

SEC. 537. The state treasurer is hereby authorized, when the general fund is exhausted, to advance the money on the controller's warrants, drawn for wages and salaries of the employees in the state printing office, out of any public funds in the treasury, which warrants shall be his vouchers until there is money in the general fund to cancel them; provided, that this section shall not apply to any fund against which there are any warrants then due, or to become due, or so as to keep claimants out of their just demands. Any sum of money remaining unexpended of the appropriation heretofore made for the purchase of materials for the state printing office is hereby appropriated to the payment of claims due for the construction of the state printing office. [*Amendment, approved April 3, 1876; Amendments 1875-6, 21; took effect from passage.*^(a)

538. Charts, maps, diagrams, engraving and lithographs.

SEC. 538. When any chart, map, diagram, or other engraving shall be required to illustrate any document ordered to be printed, such chart, map, diagram, or engraving, shall be procured by the superintendent of state printing, under the direction of the board of examiners. No bills for engraving or lithographing, or lithograph printing, other than the above, shall be allowed by the board of examiners; and the superintendent of state printing shall ascertain the whereabouts, and obtain all lithograph and other property of a similar nature belonging to the state, and preserve them. All state printing shall be

(a) The original sections 530, 531, 532, 533, 534, 535, 536 and 537 related to the compensation of the state printer. They were superseded by "An Act to establish a state printing office and to create the office of superintendent of state printing," approved March 26, 1872; 1871-2, 554. This act was repealed by the act contain-

ing the amendments to the above-named sections. See section 538.

As the original sections throw no light upon the amendments, and are consequently unimportant, they are omitted.

done in the state printing office. [*New section, approved April 3, 1876; Amendments 1875-6, 21; took effect from passage.*]

An Act to amend the political and penal codes, concerning public printing, and for other purposes.

Approved April 3, 1876; Amendments 1875-6, 16.

[The first twelve sections of this act contain the amendments to sections 526, 528, 530, 531, 532, 533, 534, 535, 536 and 537 of the Political Code, and the new sections 538 of the Political Code and 99 and 100 of the Penal Code therein inserted. It has an additional section as follows:]

Acts repealed.

SEC. 13. An act entitled "An Act to provide for the fitting up and use of the governor's mansion as a state printing office and state armory," approved March 30, 1874, and also an act entitled "An Act to establish a state printing office, and to create the office of superintendent of state printing," approved March 26, 1872, are hereby repealed. This act shall take effect and be in force from and after its passage.

An Act for the support of the state printing office.

Approved December 22, 1875; 1875-6, 4.

Money appropriated for contingent expenses.

SECTION 1. The sum of one thousand dollars is hereby appropriated, out of any money in the state treasury not otherwise appropriated, for the contingent expenses of the superintendent of state printing for the twenty-seventh fiscal year; for the payment of postage, expressage, freighting, telegraphing, and wages due employees, when the amount due any employee shall be for less than a week's work.

Appropriation for support of.

SEC. 2. The sum of forty thousand dollars is appropriated out of the general fund for the support of the state printing office for the twenty-seventh fiscal year.

To report to board of examiners—Account and report to be voucher.

SEC. 3. The superintendent must report to the board of examiners, at each meeting of the board, the name of each employee in his office and the amount due him for labor; and if the board audit the same the controller must draw a warrant in favor of such employee for the amount due, and the audited account and report of the superintendent shall be the voucher to the controller for all the warrants drawn therefor.

When to advance money out of public funds.

SEC. 4. The state treasurer is hereby authorized, when the general fund is exhausted, to advance the money on the controller's warrants drawn for wages and salaries of the employees in the state printing office out of any public funds in the treasury, which warrants shall be his vouchers until there is money in the general fund to cancel them; provided, that this section shall not apply to any fund against which there are any warrants then due or to become due, or so as to keep claimants out of their just demands.

SEC. 5. This act to take effect immediately.

An Act to appropriate moneys for the purpose of insuring the state printing office.

Approved March 17, 1876; 1875-6, 327.

[This act appropriated eleven hundred dollars for the purpose of insuring the building known as the governor's mansion, now used as the state printing office, and the materials therein.]

ARTICLE XIII.

STATE GEOLOGIST.

548. *General duties of.*

SEC. 548. It is the duty of the state geologist, with the aid of such assistants as he may appoint, to continue and with all reasonable diligence to complete the geological survey of this state. He must also prepare a report of the survey and superintend the publication thereof in the form of a geological, botanical, zoological, and physiographical history of the state, with full and scientific descriptions of its rocks, fossils, soils, minerals, mines, climates and physical geography, together with suitable and accurate geological and topographical maps and diagrams of the same.

549. *Report to governor.*

SEC. 549. He must, as near as may be at the beginning of each session of the legislature, present to the governor, who must lay the same before the legislature, a report of progress in which the operations of the geological survey during the interval since his last preceding report must be set forth, and its most important results made public.

550. *Specimens to be delivered to university.*

SEC. 550. The geological and other specimens collected by the state geological survey must, excepting such as may be required by the state geologist to aid in the preparation of his report, be delivered over to the regents of the state university, to be by them deposited in the cabinet of the same as the property of the university.

551. *Salary of geologist.*

SEC. 551. The annual salary of the state geologist is six thousand dollars, payable monthly out of any appropriations which may be made by the legislature for the continuation of the work of the survey.

552. *Compensation of assistants.*

SEC. 552. His assistants receive such compensation as he may determine, payable in the same manner out of the same fund.

553. *Board of examiners to audit accounts.*

SEC. 553. The accounts of the state geologist, including salaries and all other expenses of the survey, must be audited by the board of examiners, and, if found correct, must be paid out of the state treasury in such manner as may be provided by law.

554. *Reports and maps to be sold, etc.*

SEC. 554. The volumes and maps of the report must be sold upon such terms as the governor deems to be most advantageous to the state, and any moneys derived from such sales must be applied to the completion of the unfinished publications of the survey, and the surplus, if any, must be paid into the common school fund of the state.

An Act to authorize the distribution of the reports of the state geological survey.

Approved February 2, 1872; 1871-2, 55.

Reports for foreign nations.

SECTION 1. On the application of any consul residing in the city of San Francisco, and representing an European government, to the governor of the State of California, requesting a set of the reports of the state geological survey, to be deposited in some well-known and established scientific or literary institution under the control of the government of which he is the accredited representative, an order may issue from the governor to the secretary of state or the state geologist, as the case may be, directing them to furnish one such set

of reports only to each nation having a consul residing in San Francisco; provided further, that the state superintendent of public instruction shall be furnished, on demand on the secretary of state and the state geologist, with one set for the state normal school, two sets for the state university, and two sets for the state library.

Delivery of reports.

SEC. 2. The secretary of state or the state geologist, on the presentation of such order, shall deliver to the party therein named such set or parts of set of the reports of the state geological survey as may be designated, taking his receipt therefor. They shall annually, on the first day of September of each year, report to the governor the number of volumes so issued, at whose request, and to what institution presented.

SEC. 3. This act shall take effect immediately.

An Act supplementary to the above act.

Approved April 1, 1872; 1871-2, 924.

Distribution in United States.

SECTION 1. Of each of the volumes and maps of the state geological survey already published, or which may be hereafter published, one hundred copies shall be deposited at the office of the secretary of state by the state geologist, subject to the order of the governor, for gratuitous distribution to the various state and territorial libraries, to public libraries, and to the libraries of universities, colleges, and learned societies in the United States.

Distribution in foreign countries.

SEC. 2. One hundred copies of the same may be distributed by the state geologist to public libraries and learned institutions in foreign countries, to the officers of other geological surveys, and to persons who may have rendered special services to the geological survey of California.

County Clerks.

SEC. 3. On application by the county clerks of the respective counties to the state geologist, one copy of each of same shall be given to each county in the State of California, to be deposited and kept with the county records, and to be accessible at all reasonable hours for inspection by the general public, the county clerk being held responsible for the safe keeping of the same.

Record of distribution.

SEC. 4. The secretary of state and the state geologist shall each keep a record of the volumes and maps thus distributed, specifying the names of the institutions or individuals to whom the same are given, and the state geologist shall biennially communicate such record as kept by him to the office of the secretary of state, where a complete record of the distribution herein provided for shall be preserved.

SEC. 5. No person or institution shall receive more than one copy of each volume or map, under the provisions of this act.

SEC. 6. This act shall take effect immediately.

An Act to continue the geological survey of the State of California.

Approved March 13, 1872; 1871-2, 355.

Completion of survey.

SECTION 1. It shall be the duty of the state geologist to proceed and with all reasonable diligence complete the geological survey of this state, and the publication of the results thereof.

Appropriation.

SEC. 2. The sum of two thousand dollars per month, payable monthly for the

period of two years from and after the twenty-fifth day of March, A. D. eighteen hundred and seventy-two, is hereby appropriated out of any money in the treasury not otherwise appropriated, to pay the expenses of said survey and publication, and the controller is hereby directed to draw his warrants upon the treasurer and in favor of the state geologist therefor.

SEC. 3. This act shall take effect immediately.

[A concurrent resolution was adopted March 25, 1874; 1873-4, 992, requesting the late state geologist to return to the state all specimens collected by him as such geologist, and that they be placed in the possession of the state university for the use and benefit of the university.]

An Act to provide for the preservation of the material of the geological survey of California.

Approved March 27, 1874; 1873-4, 694.

State geologist.

SECTION 1. It shall be the duty of the state geologist to deliver to the president of the university of California, at Berkeley, in this state, all instruments, accoutrements, furniture, property, maps, books, drawings, manuscripts, notes, engravings, lithographic stones, wood-cuts, field notes and other material of every description and nature belonging or appertaining to the geological survey of California; such surrender and delivery to be made without delay.

Regents.

SEC. 2. The regents of the university of California shall safely keep and preserve, at the said university, all the property and material referred to in section one of this act, until such time as the legislature may direct otherwise.

Appropriation.

SEC. 3. The sum of five thousand dollars is hereby appropriated out of any money in the general fund not otherwise appropriated, to pay the necessary cost of arranging, packing, transporting and delivering the said property and material; and the controller shall draw his warrant or warrants for such purpose, not to exceed said sum of five thousand dollars, when directed to do so by the state board of examiners, and the treasurer shall pay the same.

Reports.

SEC. 4. The regents of said university shall keep on hand and offer for sale all volumes of reports and maps published by said geological survey; they may also, as soon as the present supply of reports and maps is exhausted, cause any portion of the same to be republished and sold at the prices now provided or that may hereafter be provided by law; provided, that said republication shall be done without cost to the state; provided further, that the proceeds of the sale of all such maps and reports, over and above the cost of republication, shall be paid in to the state treasurer and by him credited to the school fund of the state.

SEC. 5. This act shall take effect immediately.

ARTICLE XIV.

SEALERS OF WEIGHTS AND MEASURES.

561. *General duties of.*

SEC. 561. The state sealer of weights and measures has the general supervision of the weights and measures of the state. He must take charge of the standards, and see that they are kept in, and in no case removed from, a fire-proof vault in his office, except for the purpose of comparing and copying. He must correct the standards of the cities and counties, provide them with the necessary standards, balances, and other means of adjustment, and as often as once in ten years compare the same with those in his possession.

562. County clerks *ex officio* sealers.

SEC. 562. The county clerks are *ex officio* county sealers of weights and measures for their respective counties.

563. Duties of county sealers.

SEC. 563. The county sealers must keep in their offices the standards of weights and measures for their respective counties.

564. Standards for county sealers.

SEC. 564. Copies of the original standards, to be made of such material as the state sealer directs, must be deposited by him in the office of the county sealers of the several counties of this state at the expense of the counties, which are severally responsible for the preservation of the copies respectively delivered to them.

565. Standards to be marked.

SEC. 565. The state sealer must cause to be impressed on each of the copies of such original standards the letter "C," and such other device as he may direct for the particular county, which device must be recorded in the state sealer's office, and a copy thereof delivered to the respective county sealers.

566. Standards, county sealers to compare, etc.

SEC. 566. The county sealers must compare all weights and measures which are brought to them for that purpose with the copies of standards in their possession, and when the same are found or made to conform to the legal standards, the officer comparing them must seal and mark them as correct.

567. Fees.

SEC. 567. Each county sealer may receive for his services the following fees: For sealing and marking every beam, seventy-five cents; for sealing and marking measures of extension, at the rate of forty cents per yard, not to exceed one dollar and a half for any one measure; for sealing and marking every weight, twenty-five cents; for sealing and marking liquid and dry measures, if the same are of the capacity of a gallon or more, forty cents; if less than a gallon, twenty cents.

ARTICLE XV.

INSPECTOR OF GAS METERS.

577. To provide testing apparatus.

SEC. 577. The inspector of gas meters must provide and keep suitable apparatus for testing the accuracy of gas meters.

578. Seal.

SEC. 578. He must provide a suitable seal with which to seal meters inspected by him and found to be correct, and must file a copy of such seal in the office of the secretary of state.

579. May appoint deputies.

SEC. 579. He may appoint deputies.

580. Must inspect meters, when.

SEC. 580. He must, whenever requested, inspect and test the accuracy of any gas meters used or intended to be used for measuring the quantity of gas furnished by any gas company in this state, and when he finds the same correct, seal the same with his seal. No meter shall be accounted correct which registers an amount more than three per cent. greater or less than the amount actually passed through it, but the inspector may seal meters registering more than three per cent. against the gas company, when requested by the company to do so. Reasonable notice shall be given to the applicant, and also the individual

or gas company furnishing or proposing to furnish the gas, of the time and place of the inspection of the meter, and opportunity afforded them, their servants or agents, to be present at and witness the inspection. [*Amendment, approved April 1, 1876; Amendments 1875-6, 22; took effect immediately.*^(a)

581. *Reinspection.*

SEC. 581. Any individual, or gas company, placing or using for measuring gas a meter which has not been inspected by the state inspector, and does not bear his seal, shall be guilty of a misdemeanor, nor shall any charge for gas supplied through such a meter be legally collectible; nor shall the refusal of a consumer to pay the same give authority to the company to refuse to supply him with gas. When a meter, properly sealed, is once placed for the use of a consumer, an inspection may be had as often as the consumer may request the same in writing, he to pay the fee therefor whenever the meter is found not to register too fast. When the meter is found to register too fast, the gas company must pay the fee, together with the cost of removing and resetting the meter, and the inspector shall remove the seal if there be one upon it; provided, that when any meter found incorrect shall be corrected, it shall be sealed by the inspector without additional charge, if presented to him for reinspection within one month. [*Amendment, approved April 1, 1876; Amendments 1875-6, 22; took effect immediately.*^(b)

582. *Compensation.*

SEC. 582. He may collect a fee of two dollars and fifty cents for each meter tested.

583. *Residence.*

SEC. 583. He must reside in the city of San Francisco.

584. *Official bond.*

SEC. 584. He must execute an official bond in the sum of five thousand dollars.

ARTICLE XVI.

INSURANCE COMMISSIONER.

594. *Eligibility.*

SEC. 594. No person is eligible to the office of insurance commissioner or deputy who is an officer, agent, or employee of an insurance company.

595. *General duties of insurance commissioner.*

SEC. 595. The insurance commissioner must receive all bonds and securities of persons engaged in the transaction of insurance business in this state, and file and safely keep the same in his office, or deposit them as provided in this article. He must examine and inspect the financial condition of all persons engaged, or who desire to engage, in the business of insurance; issue a certificate of authority to transact insurance business in this state to any persons in a solvent condition who have fully complied with the laws of this state; determine the sufficiency and validity of all bonds, and other securities, required to be given by persons engaged or to be engaged in insurance business, and cause the same to be renewed in case of the insufficiency or invalidity thereof; and perform all other duties imposed upon him by the laws regulating the business of insurance

(a) Original section:

SEC. 580. He must, whenever requested, inspect and test the accuracy of any gas meters used or intended to be used for measuring the quantity of gas furnished by any gas company in this state, and when he finds the same to be correct, or when he has corrected the same if found incorrect, seal the same with his seal.

(b) Original section:

SEC. 581. When a meter, properly sealed, is once placed for the use of a consumer, an inspection may be had as often as the consumer may request the same in writing; he to pay the fee therefor whenever and as often as the meter is found to register correctly. When proved to be incorrect, the gas company must pay the same, together with the costs and expenses of removing and resetting the same.

in this state, and enforce the execution of such laws; prepare and furnish on demand, to all persons engaged in the insurance business, blank forms for such statements or reports as may by law be required of them; make, on or before the first day of August, in each year, a report to the governor of this state, containing a tabular statement and synopsis of the reports which have been filed in his office, showing generally the condition of the insurance business and interests in this state, and other matters concerning insurance, and a detailed statement, verified by oath, of the moneys and fees of office received by him, and for what purpose. And whenever any insurance company doing business in this state shall voluntarily surrender to the insurance commissioner its certificate of authority previously granted, thereby withdrawing from business in the state, the commissioner must make due publication of such surrender and withdrawal, daily, for the period of one month, in some newspaper published in the city of San Francisco. [*Amendment, approved March 30, 1874; Amendments 1873-4, 8; took effect July 6, 1874.*^(a)]

596. Business of insurance not to be transacted without certificate.

Sec. 596. No person must transact insurance business in this state without first procuring from the insurance commissioner a certificate of authority, as in this chapter provided; and all policies issued or renewed and all insurances taken before obtaining such certificate of authority, are null and void; and any person issuing or renewing a policy without such certificate shall forfeit to the people of the State of California the sum of one hundred dollars for each policy so issued or renewed, to be collected by the insurance commissioner in the manner prescribed in section five hundred ninety-eight of this code. But any company or corporation belonging to any other state or country having policies of life insurance outstanding in this state, and that were issued in accordance with the laws of the state, shall have the right to maintain an agent in this state for the collection of renewal premiums on such policies; and the commissioner is hereby authorized to issue to the duly appointed agent of such company or corporation a certificate, authorizing him to collect such premiums. But the company or corporation must satisfy the commissioner that it is authorized to transact insurance business in the state to which it belongs. The agent must, on or before the tenth day of January, in each year, file with the commissioner a statement, under oath, showing the gross amount of premiums collected by him during the year ending on the thirty-first day of December next preceding; and upon filing such statement, he must pay into the office of the commissioner the sum of twenty dollars in gold coin of the United States. [*Amendment, approved March 30, 1874; Amendments 1873-4, 61; took effect sixtieth day after passage.*^(b)]

597. To examine affairs of companies, when.

Sec. 597. The commissioner, whenever necessary, or whenever he is requested by verified petition, signed by three persons interested, either as stockholders, policy holders, or creditors of any person engaged in insurance business, showing that such person is insolvent under the laws of this state, must make examination of the business and affairs relating to the insurance business of such person; and for such purpose has free access to all the books and papers of such person, and must thoroughly inspect and examine all his affairs, and ascertain his condition and ability to fulfill his engagements, and whether he

(a) The original section did not contain the last sentence of the above amendment.

(b) The original section consisted of the first two clauses of the above amendment down to and including the words "null and void."

The section was amended by another act of March 30, 1874 (Amendments 1873-4, 9) so as to read like the

first full sentence of the above amendment down to and including the words "of this code," omitting the words "by the insurance commissioner;" but by operation of section 117 of the amendatory act last referred to (see Amendments 1873-4, 60; post, 4457) the amendment given in the text superseded the original section and the other amendment of March 30, 1874.

has complied with all the provisions of law applicable to his insurance transactions. Such person and his officers and agents must open his books and papers for the inspection of the commissioner, and otherwise facilitate such examination; and the commissioner may administer oaths and examine under oath any persons relative to the business of such person, and if he finds the books to have been carelessly or improperly kept or posted, he must employ sworn experts to rewrite, post, and balance the same, at the expense of such person. Such examination must be conducted in the county where such person has his principal place of business, and must be private, unless the commissioner deems it necessary to publish the result of such investigation, in which case he may publish the same in two of the public newspapers of this state, one of which must be published in the city of San Francisco.

598. *Fines imposed if companies refuse.*

SEC. 598. The commissioner may collect the sum of five hundred dollars from any person engaged in the business of insurance for each refusal to give full and truthful information and response in writing to any inquiry in writing by the commissioner relating to the business of insurance as carried on by him; and for that purpose suits may be instituted by the commissioner, in the name of the people of the State of California, in any court of competent jurisdiction.

599. *May issue subpoenas.*

SEC. 599. The commissioner may issue subpoenas for witnesses to attend and testify before him on any subject touching insurance business or in aid of his duties, which must be served, obeyed, and enforced as provided in the Code of Civil Procedure for civil cases, the commissioner to issue attachments and impose the penalty for disobedience; and, in addition, the defaulting witness may be punished as provided in the Penal Code.

600. *Proceedings on insolvency of companies.*

SEC. 600. Whenever the commissioner ascertains that any person engaged in the insurance business is insolvent within the meaning of this chapter, he must revoke the certificate granted, and send by mail to such person, addressed to him at his principal place of business, or deliver to him personally, notice of such revocation, and cause notice thereof to be filed in his office, and also to be published daily for four weeks in some newspaper published in the city of San Francisco. He must require such person, after receiving notice of the revocation, or after the first publication thereof, to discontinue the issuing of any new policies, and the renewal of any previously issued; and in such cases must require the person or the manager or agent of the business to repair the capital thereof within such period as he may designate in such requisition, by assessment upon the stockholders for such amounts as will make the capital equal to the amount of the paid-up capital, exclusive of assets needed to pay all ascertained liabilities for losses reported, for expenses and taxes, and exclusive of the entire premiums received for outstanding risks.

601. *Proceedings when this is not done.*

SEC. 601. In case any person, upon the requisition of the commissioner, fails to make up the deficiency of the capital in accordance with the requirements of this chapter, or to comply in all respects with the laws of this state, the commissioner must communicate the fact to the attorney-general, who must commence an action in the name of the people of this state, in the district court of the judicial district where the person in question is located or has his principal office, against such person, and apply for an order requiring cause to be shown why the business should not be closed; and the court must thereupon hear the allegations and proofs of the respective parties, as in other cases. If it

appears to the satisfaction of the court that such person is insolvent, or that the interests of the public so require, the court must decree a dissolution of such corporation, and a winding up of its affairs and a distribution of the effects of such person; but otherwise, the court must enter a decree annulling the act of the commissioner in the premises, and authorizing such person to resume business. But the commissioner must not be held liable for damages, if he has acted in good faith. In the event of any additional losses occurring upon new risks taken after the expiration of the period limited by the commissioner in the requisition, and before the deficiency has been filled up, the directors of any company, corporation, or association are individually liable to the extent thereof.

602. *What constitutes insolvency.*

SEC. 602. Whenever provision for the liabilities of any person engaged in the insurance business in this state for losses reported, expenses, taxes, and reinsurance of all outstanding risks estimated at fifty per cent. of the premiums received and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all the marine risks, and at rates for life risks based upon the rates of mortality established by the American Experience Life Table, and interest at four and one half per cent. per annum, and such rates for accident and other kinds of insurance as are accepted by the insurance authorities of the State of New York, would so far impair his capital stock paid in to reduce the same below two hundred thousand dollars in gold coin of the United States, or below sixty per cent. of said capital stock paid in, such person is insolvent; and in the case of a person thus engaged in the insurance business in this state, on the mutual plan, if his available cash assets shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of two hundred thousand dollars in United States gold coin, such person is insolvent. [*Amendment, approved March 30, 1874; Amendments 1873-4, 62; took effect July 2, 1874.*]^(a)

603. *Must keep a record.*

SEC. 603. The commissioner must keep and preserve, in a permanent form, a full record of his proceedings, including a concise statement of the condition of each person visited or examined by him.

604. *May employ actuary, when.*

SEC. 604. The commissioner may employ an actuary to make the valuation of life policies, at the compensation of not exceeding three cents for each thousand dollars of insurance, to be paid by the person or corporation for which the valuation is made.

(a) Original section:

SEC. 602. Whenever the liabilities of any person engaged in the insurance business, for losses reported, expenses, taxes, and reinsurance of all outstanding risks, estimated at fifty per cent. of the premiums received on fire risks and marine time risks, at the full premiums on all other marine risks, and at rates for life risks based upon the rate of mortality as established by the American Experience Life Table, and the rate of interest assumed to be four and one half per cent. per annum, and such rates for accidental and other kinds of insurance as are generally accepted by the superintendent of the insurance department of the State of New York, would impair his capital stock already paid in to an extent exceeding twenty per cent., such person is insolvent.

The section was amended by another act of March 30, 1874 (Amendments 1873-4, 9) so as to read as follows; but by operation of section 117 of the last-named amendatory act of March 30, 1874 (see Amendments 1873-4, 60; post, 4457) the amendment given in the text superseded both the original section and the following amendment of March 30, 1874.

SEC. 602. Whenever provision for the liabilities of any person engaged in the insurance business in this state, for losses reported, expenses, taxes, and reinsurance of all outstanding risks estimated at fifty per cent. of the premiums received and receivable on all fire risks and marine time risks, at the full premiums received and receivable on all other marine risks, and at rates for life risks, based upon the rate of mortality established by the American Experience Life Table, and interest at four and one half per cent. per annum, and such rates for accident and other kinds of insurance, as are accepted by the insurance authorities of the State of New York, would so far impair his capital stock paid in as to reduce the same below two hundred thousand dollars in gold coin of the United States, or below twenty per cent. of said capital stock paid in, such person is insolvent. And in the case of a person thus engaged in the insurance business in this state, on the mutual plan, if his available cash assets shall not exceed his liabilities, as hereinbefore enumerated, in the full sum of two hundred thousand dollars in United States gold coin, such person is insolvent.

605. *Fees to be paid to commissioner.*

SEC. 605. The commissioner must require in advance, in United States gold coin, the following fees:

1. For filing the articles of incorporation or certified copy of articles or other certificate required to be filed in his office, thirty dollars;
2. For filing the annual statement required to be filed, twenty dollars;
3. For filing any other papers required by this chapter to be filed, five dollars;
4. For furnishing copies of papers filed in his office, twenty cents per folio;
5. For certifying copies, one dollar each;
6. For each certificate issued as provided in section 619, the sum of five dollars.

606. *Assessments for deficiency in salary and expenses.*

SEC. 606. If the salary of the commissioner and the expenses of his office exceed the fees and charges collected by him, such excess must be annually assessed by the commissioner upon all persons or corporations engaged in the business of insurance in this state, and they are severally liable therefor, pro rata, according to the amount of premiums received or receivable from risks taken in this state, respectively, during the year ending on the thirty-first day of December next preceding the assessment. The commissioner must collect all fees and assessments, and pay monthly into the state treasury whatever amounts may be received and collected by him. He may bring actions in the name of the people of this state to enforce such collection; and any person liable for any assessment who neglects or refuses to pay the amount of such assessment within ten days after demand thereof in writing by the insurance commissioner, becomes liable to pay double the amount of such assessment, and any judgment recovered in such case must be for such double amount and costs.

607. *Certain certificates to be filed in his office.*

SEC. 607. The commissioner must cause every corporation or person, before engaging in the business of insurance, to file in his office as follows:

1. If incorporated under the laws of this state, a copy of the articles of incorporation or statement of any increase or diminution of the capital stock, certified by the secretary of state to be a copy of that which is filed in his office;

2. If incorporated under the laws of any other state or country, a copy of the articles of incorporation, if organized or formed under any law requiring articles to be filed, duly certified by the officer having the custody of such articles; or, if not so organized, a copy of the law, charter, or deed of settlement under which the organization is made, duly certified by the proper custodian thereof, or proved by affidavit to be a copy; also, a certificate, under the hand and seal of the proper officer of such state or country having supervision of insurance business therein, that such corporation or company is organized under the laws of such state or country, with the amount of capital stock or assets required by this chapter;

3. If not incorporated, a certificate setting forth the nature and character of the business, the location of the principal office, the names of the persons and of those composing the association, the amount of actual capital employed or to be employed therein, and the names of all officers and persons by whom the business is or may be managed. The certificate must be verified by the affidavit of the chief officer, secretary, agent, or manager of the association; and if there is any written articles of agreement or association, a copy thereof must accompany such certificates.

608. *Companies doing business by agents.*

SEC. 608. He must require from every insurance association not formed under the laws of this state, or not incorporated, carrying on the business of insurance by an agent:

1. A certified or verified power of attorney or written authority to such agent;
 2. A notice of any change of agents, or in the powers of any agent, within ninety days after such change, and a certified copy of any new or further power of attorney or authority before the same is acted under;

3. When by any law, agreement, or other writing, any change is made in respect to any of the particulars set forth in the certificate on file, a certified copy of such law, agreement, or other writing, verified respectively as certificates are required to be verified; also, a notice of such change before the same is acted under.

609. *May determine name of new corporation.*

SEC. 609. The commissioner must require the name under which any corporation hereafter proposes to be formed or organized under the laws of this state for the transaction of insurance business, to be submitted to him before the commencement of such business; and he may reject any name or title so submitted when the same is an interference with or too similar to one already appropriated, or likely to mislead the public in any respect; and in such case a name not liable to such objection must be chosen.

610. *Statement to be made by insurance companies.*

SEC. 610. The commissioner must require from every corporation or person doing business of insurance in this state, a statement, verified as follows:

1. If it be made by a corporation organized under the laws of this state, by the oaths of the president and secretary, or of the vice-president and secretary thereof;

2. If made by a foreign insurance company or person, by the oath of the principal executive officer thereof;

3. If it be made by an individual or firm, by the oath of such individual or a member of the firm. [*Amendment, approved March 30, 1874; Amendments 1873-4, 10; took effect July 6, 1874.*^(a)]

611. *Statement, when to be made.*

SEC. 611. The statement mentioned in the preceding section must exhibit the condition and affairs of every such corporation, person, firm, or individual, on the thirty-first day of December then next preceding, and must be published in a daily newspaper in the city where the principal office is located for the period of one week; and must be filed with the insurance commissioner, as follows:

1. If made by a person residing in, or by a company organized under the laws of this state, on or before the first day of February of each year;

2. If made by a person resident of, or by a company organized under the laws of any other state or territory or district of the United States, on or before the first day of March of each year.

3. If made by a person resident of, or by a company organized under the laws of any country foreign to the United States, on or before the first day of April of each year. [*Amendment, approved March 30, 1874; Amendments 1873-4, 10; took effect July 6, 1874.*^(a)]

(a) The original section had the following further clause at the end of the second subdivision, "or by the oath of a duly authorized agent thereof residing in this state."

(a) Original section:

SEC. 611. The statement mentioned in the preceding section must exhibit the condition and affairs of every such corporation, person, firm or individual, on the thirty-first day of December then next preceding, and must be published in a daily newspaper in the city where the principal office is located, for the period of one week; and must be filed with the insurance commissioner, as follows:

1. By persons transacting the business of fire, marine, or inland insurance:

(a) If made by a person residing in or by a company organized under the laws of this state, on or before the first day of February of each year;

(b) If made by a person resident of or by a company organized under the laws of any other state or territory or district of the United States, on or before the first day of June of each year;

(c) If made by a person resident of or by a company organized under the laws of any country foreign to the

612. *Statement by fire, marine, and inland insurance companies.*

SEC. 612. Such statement, if made by fire, marine, and inland insurance companies, must show:

First. The amount of the capital stock of the company.

Second. The property or assets held by the company, specifying:

1. The value of the real estate held by such company;
2. The amount of cash on hand and deposited in banks to the credit of the company, specifying the same;
3. The amount of cash in the hands of agents and in course of transmission;
4. The amount of loans secured by bonds and mortgages constituting the first loan on real estate on which there is less than one year's interest due or owing;
5. The amount of loans on which interest has not been paid within one year previous to statement;
6. The amount due the company on which judgments have been obtained;
7. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stock;
8. The amount of stocks held as collateral security for loans, with the amount loaned on each kind of stock, its par value and market value;
9. The amount of interest due and unpaid;
10. The amount of all other loans made by the company, specifying the same;
11. The amount of premium notes on hand on which policies are issued;
12. All other property belonging to the company, specifying the same.

Third. The liabilities of such company, specifying:

1. The amount of losses due and unpaid;
2. The amount of claims for losses resisted by the company;
3. The amount of losses in process of adjustment or in suspense, including all reported or supposed losses;
4. The amount of dividends declared, due, and remaining unpaid;
5. The amount of dividends declared, but not due;
6. The amount of money borrowed and security given for the payment thereof;
7. Gross premiums (without any deduction) received and receivable upon all unexpired fire risks running one year or less from date of policy—reinsurance thereon at fifty per cent.;

8. Gross premiums (without any deductions) received and receivable upon all unexpired fire risks running more than one year from date of policy—reinsurance thereon pro rata;

9. Gross premiums (without any deductions) received and receivable upon all unexpired marine and inland navigation risks, except time risks—reinsurance thereon at one hundred per cent.;

10. Gross premiums (without any deductions) received and receivable on marine time risks—reinsurance thereon at fifty per cent.;

11. Amount reclaimable by the insured on perpetual fire insurance policies, being ninety-five per cent. of the premium or deposit received;

12. Reinsurance fund and all other liabilities, except capital, under the life insurance or any other special department;

United States, on or before the first day of June of each year.

2. By persons transacting the business of insurance, other than fire, marine, or inland:

(a) If made by a person residing in or by a company organized under the laws of this state, on or before the first day of March of each year;

(b) If made by a person resident of or by a company

organized under the laws of any other state or territory or district of the United States, on or before the first day of April of each year;

(c) If made by a person resident of or by a company organized under the laws of any country foreign to the United States, on or before the first day of June of each year.

13. Unused balances of bills and notes taken in advance for premiums on open marine and inland policies, or otherwise, returnable on settlement;

14. Principal unpaid on scrip or certificates of profits which have been authorized or ordered to be redeemed;

15. Amount of all other liabilities of the company, specifying the same.

Fourth. The income of the company during the preceding year, specifying:

1. The amount of cash premiums received;

2. The amount of notes received for premiums;

3. The amount of interest money received, specifying the same;

4. The amount of income received from all other sources, specifying the same.

Fifth. The expenditures during the preceding year, specifying:

1. The amount of losses paid;

2. The amount of dividends paid;

3. The amount of expenses paid, including commissions and fees to agents and officers of the company;

4. The amount paid for taxes;

5. The amount of all other payments and expenditures.

Sixth. 1. The amount of risks written during the year;

2. The amount of risks expired during the year;

3. The amount of risks written during the year in the State of California;

4. The amount of premiums thereon.

613. *Statement by life, health and accident companies.*

SEC. 613. Such statement, if made by life, health, and accident companies, must show:

First. The amount of the capital stock of the company.

Second. The property or assets held by the company, specifying:

1. The value of the real estate held by the company;

2. The amount of cash on hand and deposited in banks to the credit of the company, specifying the same;

3. The amount of loans secured by bond and mortgage on real estate, specifying the same;

4. Amount of loans secured by pledge of bonds, stocks, or other marketable securities as collateral, specifying the same;

5. Cash market value of all stocks and bonds owned by the company, specifying the same;

6. Interest due the company and unpaid;

7. Interest accrued but not due;

8. Premium notes and loans in any form taken in payment of premiums on policies now in force;

9. Gross amount of premiums in process of collection and transmission on policies in force;

10. Gross amount of deferred premiums;

11. All other assets, specifying the same.

Third—Liabilities. 1. Claims for death losses and matured endowments, due and unpaid;

2. Claims for death losses and matured endowments in process of adjustment or adjusted and not due;

3. Claims resisted by the company;

4. Amounts due and unpaid on annuity claims;

5. Trust fund, on deposit, or net present value of all the outstanding policies, computed according to the American experience tables of mortality, with four and one half per cent. interest;

6. Additional trust fund on deposit, or net present value of extra and special risks, including those on impaired lives;

7. Amount of all unpaid dividends of surplus percentages, bonuses, and other description of profits to policy-holders, and interest thereon;

8. Amount of any other liability to policy-holders or annuitants not included above;

9. Amount of dividends unpaid to stockholders;

10. Amount of national, state, and other taxes due;

11. All other liabilities, specifying the same.

Fourth—Income. 1. Cash received for premiums on new policies during the year;

2. Cash received for renewal of premiums during the year;

3. Cash received for purchase of annuities;

4. Cash received for all other premiums;

5. Cash received for interest on loans, specifying the same;

6. Rents received;

7. Cash received from all other sources, specifying the same;

8. Gross amount of notes taken on account of new premiums;

9. Gross amount of notes taken on account of renewal premiums.

Fifth—Expenditures. 1. Cash paid for losses;

2. Cash paid to annuitants;

3. Cash paid for lapsed, surrendered, and purchased policies;

4. Cash paid for dividends to policy-holders.

5. Cash paid for dividends to stockholders;

6. Cash paid for reinsurances;

7. Commission paid to agents;

8. Salaries and other compensation of officers and employees, except agents and medical examiners;

9. Medical examiners' fees and salaries;

10. Cash paid for taxes;

11. Cash paid for rents;

12. Cash paid for commuting commissions;

13. All other cash payments.

Sixth. Balance sheet of premium note account.

Seventh. Balance sheet of all the business of the company.

Eighth. 1. Total amount of insurance effected during the year on new policies;

2. Total amount of insurance effected during the year in the State of California;

3. Premiums received during the year on risks written in the State of California.

614. *Stock notes, how computed.*

SEC. 614. Mutual companies formed, existing, and doing business under an act entitled "An Act to provide for the incorporation of mutual insurance companies," passed April twenty-sixth, eighteen hundred and fifty-one, may report their approved stock notes as capital paid up, and such notes for all purposes must be deemed part of the paid-up capital stock of such corporation.

615. *To furnish blanks.*

SEC. 615. The insurance commissioner must cause to be prepared and furnish to each person and to each of the companies incorporated in this state, and to the attorney of each of the companies incorporated or chartered by other states and foreign governments, printed forms of the statements herein required; and he may make such changes from time to time in the form of the same as seems to him best adapted to elicit from the companies a true exhibit of their condition in

respect to the several points hereinbefore enumerated. The same forms must be addressed to all persons and companies engaged in the same kind of business.

616. *Agent upon whom process may be served.*

SEC. 616. The insurance commissioner must require, as a condition precedent to the transaction of insurance business in this state by any foreign corporation or company, that such corporation or company must file in his office the name of an agent, and his place of residence in this state, on whom summons and other process may be served in all actions or other legal proceedings against such corporation or company. All process so served gives jurisdiction over the person of such corporation or company. The agent so appointed and designated shall be deemed in law a general agent, and must be the principal agent or chief manager of the business of such corporation or company in this state. Any act, statement, representation, or agreement, done or made by an agent so appointed and designated, which in any manner pertains to the business of such corporation or company, shall be deemed the act, statement, representation, or agreement of the principal, and shall have the same force and effect as if done or made by the principal. Any such foreign corporation or company shall, as a further condition precedent to the transaction of insurance business in this state, and in consideration of the privilege to transact such insurance business in this state, make and file with the insurance commissioner an agreement or stipulation, executed by the proper authorities of such corporation or company, in form and substance as follows: "The (giving name of corporation or company), does hereby stipulate and agree, that in consideration of the permission granted by the State of California to it, to transact insurance business in that state, that in all litigation between (giving name of corporation or company), and any citizen of the State of California, the courts of said state shall have and maintain exclusive jurisdiction of such litigation. And it is further agreed that no action hereafter commenced in any district court of said State of California against (insert name), shall be removed or transferred therefrom to the United States circuit court." If in any action hereafter commenced in any district court of this state, by a citizen thereof, against a foreign corporation or company doing insurance business in said state, such corporation or company shall transfer, or cause to be transferred, such action to the United States circuit court, the right of such corporation or company to transact insurance business in said state shall thereupon and thereby cease and determine; and the insurance commissioner shall immediately revoke the certificate of such corporation or company, authorizing it to do business in said State of California. [*Amendment, approved March 28, 1874; Amendments 1873-4, 63; took effect from passage; repealed inconsistent acts.*]^(a)

617. *Duties of commissioner when companies fail to make statement.*

SEC. 617. The commissioner must collect the sum of one thousand dollars from any corporation or company engaged in the business of insurance, for a failure to make and deposit, in his office, within ninety days after being thereto requested by said commissioner, the statements and stipulations provided for in the eighth preceding section and the last preceding section; and an additional penalty of two thousand dollars for each and every month thereafter that such corporation or company continues to transact the business of insurance, until such certificate, statement, and stipulations are filed; and for that purpose suit may be instituted in the name of the people of the State of California, in any court of competent jurisdiction. The insurance commissioner shall in-

(a) The original section consisted only of the first two sentences of the above amended section, omitting the words "or company."

mediately after the passage of this act give due notice of its provisions to all foreign insurance corporations or companies doing or proposing to do business in this state. [*Amendment, approved March 28, 1874; Amendments 1873-4, 65; took effect from passage; repealed inconsistent acts.*]^(a)

618. *Deposits and dividends.*

SEC. 618. Whenever the laws of any state of the United States require any life insurance company incorporated by or organized under the laws of this state to deposit with some officer of this state securities in trust for or for the benefit of the policy-holders of such corporation as a prerequisite to transacting business in such other state, the commissioner of this state must receive from such life insurance corporation securities of the amount required by the laws of such other state, on deposit and in trust for the policy-holders of such corporation, the value of which must be equal to the value of interest-bearing stocks, bonds, or other securities of the United States. He must, upon the receipt of the securities, forthwith make a special deposit in the state treasury of the same, in packages marked with the name of the corporation from whom received, where they must remain as security for policy-holders in the corporation to which they respectively belong; but so long as any corporation so depositing continues solvent, he must permit such corporation to collect the interest or dividends on its securities so deposited, and from time to time to withdraw any such securities on depositing other securities in the stead of those to be withdrawn, such new securities to be of the same value mentioned in this chapter; but such securities must not be withdrawn from the state treasury unless upon the written order of the acting president and secretary of the corporation making the deposits, which order must be indorsed by the commissioner, or upon the order and authority of some court of competent jurisdiction.

619. *Deposits, receipts for.*

SEC. 619. Whenever any life insurance corporation, organized under the laws of this state, has deposited with the commissioner the requisite securities, in conformity with the laws of the state in which such corporation is desirous of transacting its business, he must issue to such corporation a certificate, under his official seal, of such deposit, for each state requiring the same, which must state the items and amount of securities thus deposited, and that they are of the market value represented therein; but no securities must be estimated above the par value of the same.

620. *Deposits returned, when.*

SEC. 620. Whenever any life insurance corporation has so deposited its securities, and has paid, canceled, or reinsured all its unexpired policies, and all its liabilities under such policies are extinguished or assumed by other responsible corporations having a similar deposit with the commissioner, then if, on application of such corporation, verified by the oath of its president and secretary, and from an examination of the books of the corporation and of its officers under oath, the insurance commissioner is satisfied that all of its policies are so paid, canceled, extinguished, or reinsured, he must deliver up to the corporation the securities deposited.

621. *Examination of securities.*

SEC. 621. The commissioner must make an annual examination of the securities received by him from each life insurance corporation, and if it appear at

(a) Original section:

SEC. 617. The commissioner must collect the sum of five hundred dollars from any person or corporation engaged in the business of insurance for a failure to make and deposit in his office the statements provided for in the eighth preceding section, and an additional penalty of one thousand dollars for each and every

month thereafter that such person or corporation continues to transact the business of insurance until such certificate and statement is filed, and for that purpose suits may be instituted in the name of the people of the State of California in any court of competent jurisdiction.

any time that the securities deposited by any corporation amount to less than the sum required for the purposes for which the deposit was made, he must notify the corporation thereof; and unless the deficiency is made up within thirty days after notice, the commissioner must countermand all the certificates he may have issued to the corporation under this chapter, and give notice thereof to the officers of the several states to whom the certificate may have been transmitted; and he must also publish the notice for three weeks successively in one daily newspaper printed in the city of Sacramento, and one daily newspaper printed in the city of San Francisco, at the expense of the corporation, collected by assessment.

622. *Retaliatory clause.*

SEC. 622. Whenever the laws of any state or count[r]y require of insurance companies, incorporated under the laws of this state, and having agencies in such other state or count[r]y, or of the agents thereof, any further or greater license, fees, charges, impositions, taxes, deposit of securities, statements, publications, or certificates of authority, or inflict any greater fines or penalties upon such corporations or agents than are required from similar companies or agents, belonging to such state or count[r]y respectively, then and in every such case, from every company, person, or corporation of such state or count[r]y, which has or is about to establish agencies in this state, the commissioner must, before it continues or commences to do business in this state, collect the same license, fees, charges, impositions, and taxes, "as are imposed by such state upon agents, companies, corporations, or persons of this state, doing business in such state in excess of the license, fees, charges, impositions, and taxes, upon agents, companies, corporations, or persons of that state," and require the same statements, publications, certificates of authority, and the same deposit of securities as are required by the laws of such state or country, of companies, persons, or corporations, and agents of this state, doing business in such other state or country. And the same fines and penalties must be inflicted upon companies, persons or corporations, of such other state or country, and their agents, as are inflicted by the laws of such state or country upon companies, persons, or corporations of this state, and their agents, in excess of such fines and penalties inflicted upon companies, persons, or corporations belonging to such state or country, respectively; which may be recovered by the insurance commissioner in the manner provided in section 598 of this code. [*Amendment, approved March 30, 1874; Amendments 1873-4, 11; took effect July 6, 1874.*]^(a)

623. *Bonds from foreign corporations.*

SEC. 623. The commissioner must require every company, association or individual, not incorporated under the laws of this state, and proposing to transact insurance business by agent or agents in this state, before commencing such business to file in his office a bond, to be signed by the person or firm, officer or agent, as principal, with two sureties, to be approved by the commissioner, in the penal sum of two thousand dollars for each insurance company, association,

(a) Original section:

Sec. 622. Whenever the laws of any state of the United States require of insurance companies incorporated under the laws of this state and having agencies in such other state, or of the agents thereof, any further or greater license, fees, charges, impositions, taxes, deposit of securities, statements, publications, or certificates of authority, or inflict any greater fines or penalties upon such corporations or agents than are required from similar companies or agents of other states doing business in this state, then and in every such case, from every company, person, or corporation of such other state which has or is about to establish

agencies in this state, the commissioner must, before it continues or commences to do business in this state, collect the same license, fees, charges, impositions, and taxes, and require the same statements, publications, certificates of authority, and the same deposit of securities as are required by the laws of such state of similar companies, persons, or corporations, and agents of this state doing business in such other state; and the same fines and penalties must be inflicted upon companies, persons, or corporations of such other states, and their agents, as are inflicted by such states upon companies, persons, or corporations of this state, and their agents, under the laws of such other states.

firm or individual for whose account it is proposed to collect premiums of insurance in this state, the conditions of such bonds to be as follows:

1. That the person or firm, agent or officer named therein, acting on behalf of the company, association, firm or individual named therein, will pay to the treasurer of the county, or city and county, in which the principal office of the agency is located, such sum per quarter, quarterly in advance, for a license to transact an insurance business, or such other license as may be imposed by law, so long as the agency remains in the hands of the person or firm, officer or agent named as principal in the bond;

2. That the person or firm, officer or agent will pay to the state all stamp or other duties on the gross amounts insured by them in the manner and at the time prescribed by law, inclusive of renewals on existing policies;

3. That the person, firm, agent or corporation named therein will conform to all the provisions of the revenue and other laws made to govern them.

624. *Separate bonds, when.*

SEC. 624. Whenever the same person, firm, officer or agent desires to collect premiums of insurance for more than one company, association or individual, not incorporated under the laws of this state, the commissioner must require a separate bond, as provided in the preceding section, for each company or association so represented by such person, firm, officer or agent.

625. *Commissioner to furnish assessor with certain information.*

SEC. 625. The commissioner must, before the commencement of each fiscal year as fixed in the revenue laws, furnish the assessor of the county in which the principal office of any person or corporation doing the business of insurance is situated, all the data concerning premiums collected by, and all other necessary information in relation to the business of such person or corporation as will assist the assessor in the performance of his duties.

626. *Securities.*

SEC. 626. The commissioner must require from every person, before and after engaging in the business of insurance, a full compliance with all the provisions of Title II, Part IV, Division I of the Civil Code applicable thereto; and every person neglecting to comply with such requirements is subject to the fines and penalties therein prescribed. [See post, 5414.]

627. *Statements to be based on gold coin values.*

SEC. 627. All statements, estimates, percentages, payments, and calculations required by this chapter to be made, either by the commissioner or persons engaged in the business of fire or marine insurance, must be in gold coin of the United States.

628. *Salary.*

SEC. 628. The annual salary of the insurance commissioner is three thousand dollars.

629. *Salary of deputy.*

SEC. 629. The annual salary of the deputy of the commissioner of insurance is eighteen hundred dollars.

630. *Contingent expenses.*

SEC. 630. The commissioner may procure rooms for his office, at a rent not to exceed seventy-five dollars per month, and may provide a suitable safe and furniture therefor; he may also provide stationery, fuel, printing, and other conveniences necessary for the transaction of the business of his office. All expenditures authorized in this section must be audited by the board of examiners and paid in the same manner as the salary of the commissioner.

631. Location of office.

SEC. 631. The commissioner must keep his office in the city of San Francisco.

632. Official bond.

SEC. 632. The commissioner must execute an official bond in the sum of ten thousand dollars.

633. Conditions precedent to right to act as agent or solicitor.

SEC. 633. No person shall, in this state, act as the agent or solicitor of any life insurance company doing business in this state, until he has produced to the commissioner and filed with him, a duplicate power of attorney from the company, or its authorized agent, authorizing him to act as such agent or solicitor. Upon filing such power, the commissioner shall issue a license to him to act as such agent or solicitor for such company, if such company has received a certificate of authority from such commissioner to do business in this state; provided, that if such agent or solicitor shall, within the twelve months next preceding, have been in the employ of any other company, or its authorized agent, as such agent or solicitor, he must produce to the commissioner written evidence from such employer that all moneys he may have collected for such company or agent have been paid over to said company or agent. Such license shall continue in force for twelve months from the date thereof, but may be and shall be sooner revoked upon application of the company or its authorized agent. Such license may be renewed from time to time, for an additional period of twelve months, on production by the holder to the commissioner of a certificate from the company that such person's authority as such agent or solicitor continues. For each such license, or renewal thereof, the commissioner shall receive the sum of one dollar. The commissioner shall keep an alphabetical list of the names of persons to whom such license shall be issued, with the date of the license and renewal, and the name of the company for which such person is working. If any person shall fraudulently assume to be an authorized agent or solicitor of any life insurance company, and thus procure, or attempt to procure, applications, or receive or attempt to obtain money for premiums, he shall be guilty of a misdemeanor. If any person shall, under a false or fictitious name, procure, or attempt to procure, a license to act as agent or solicitor of any life insurance company, he shall be guilty of a misdemeanor. [New section, approved March 12, 1874; Amendments 1873-4, 66; took effect sixtieth day after passage.]

ARTICLE XVII.

FISH COMMISSIONERS.

642. General duties of.

SEC. 642. It is the duty of the fish commissioners:

1. To establish fish breederies for stocking the waters of this state with foreign and native fish;
2. To purchase and import the spawn or ova of fish suitable for food;
3. To stock with such spawn the waters of this state;
4. To employ persons skilled in fish breeding to assist them in their duties;
5. To furnish plans for and direct and compel the construction and repair of fish ladders and ways upon dams and obstructions;
6. To report biennially to the governor a statement of all their transactions and disbursements.

643. No compensation.

SEC. 643. The commissioners receive no compensation.

ARTICLE XVIII.

BOARD OF EXAMINERS.

654. *Chairman.*

SEC. 654. The governor, and in his absence the secretary of state, is chairman of the board of examiners.

655. *Meetings.*

SEC. 655. The semi-monthly meetings of the board must be held at the state capitol on the first and third Mondays in each month.

656. *Record claims to be entered on minutes.*

SEC. 656. The board must keep a record of all their proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record. And all claims must be entered on the minutes of the board, before the same shall be acted upon. [*Amendment, approved March 30, 1874; Amendments 1873-4, 67; took effect from passage.*^(a)]

657. *Rules and regulations.*

SEC. 657. The board may, in writing, establish rules and regulations not inconsistent with law for its government.

658. *Witnesses.*

SEC. 658. The chairman may issue subpoenas and compel the attendance of witnesses before the board or any member thereof in the same manner that any court in this state may; and whenever the testimony of any witness against a demand pending before them is material, the chairman must cause the attendance of the witness before the board, or a member thereof, to testify concerning the demand, and the board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant.

659. *Depositions.*

SEC. 659. Each member of the board may take depositions to be used before it.

660. *Presentation of and action on claims for which appropriations have been made.*

SEC. 660. Any person having a claim against the state for which an appropriation has been made, may present the same to the board in the form of an account or petition, and the clerk of the board must date, number, and file such claim, and the board must allow or reject the same in the order of its presentation. The board may for cause postpone action upon a claim for not exceeding one month.

661. *Approval of claims.*

SEC. 661. If the board approve such claim they must indorse thereon, over their signatures, "Approved for the sum of — dollars," and transmit the same to the office of the controller of state; and the controller must draw his warrant for the amount so approved in favor of the claimant or his assigns in the order in which the same was approved.

662. *Disapproval.*

SEC. 662. If the board disapprove such claim they must cause the same to be filed with the records of the board with a statement showing such disapproval, and the reasons therefor.

663. *Same, as to claims provided for, but for which there is no appropriation.*

SEC. 663. If no appropriation has been made for the payment of any claim presented to the board, the settlement of which is provided for by law, or if an

(a) The original section did not contain the last sentence of the above amendment.

appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislature with a statement of their approval.

664. *Same, as to unsettled claims.*

SEC. 664. Any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners at least four months before the meeting of the legislature, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.

665. *Time of meeting for action on claims referred to in last section.*

SEC. 665. On the first Monday of September preceding the meeting of each legislature, the board must hold a session at the state capitol for the purpose of examining the class of claims referred to in the preceding section, and may adjourn from time to time until their work is completed. Prior thereto they must cause a list and brief abstract of all claims filed with them to be made and published in some newspaper at Sacramento city for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the board will proceed to examine the claims.

666. *Proof and examination of such claims.*

SEC. 666. The board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them, and report to the legislature such facts and recommendations concerning them as they may think proper. In making their recommendations they may state and use any official or personal knowledge which any member of the board may have touching such claims.

667. *Report on such claims.*

SEC. 667. The board must make up their report and recommendations at least thirty days before the meeting of the legislature. A brief abstract of their report, showing the claims rejected, and those, or the amounts thereof, allowed, must be published in a newspaper published at Sacramento city for such time as the board may prescribe before the meeting of the legislature.

668. *Disqualifications.*

SEC. 668. No member of the board must act upon any claim in which he is interested, or for expenditures incurred in his office, nor must he be present when the decision thereon is made.

669. *Treasurer to act in place of disqualified members.*

SEC. 669. When any member of the board is disqualified from acting upon any claim, the state treasurer must act in his stead.

670. *Restrictions on power of board.*

SEC. 670. The board must not entertain, for the second time, a demand against the state once rejected by it or by the legislature, unless such facts are presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial.

671. *Appeals.*

SEC. 671. Any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislature of the state, by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislature.

672. *Controller not to draw warrant for any claims not audited by examiners.*

SEC. 672. The controller must not draw his warrant for any claim unless it has been approved by the board, and when, hereafter, the controller is directed

to draw his warrant for any purpose, this direction must be construed as subject to the provisions of this section, unless the direction is accompanied by a special provision exempting it from its operation.

673. *Certain claims exempted.*

SEC. 673. Claims upon the contingent fund of either house of the legislature, and for official salaries, are exempted from the operations of the provisions of the preceding twelve sections.

674. *Board may prevent payment of controller's warrants, when.*

SEC. 674. Whenever the board has reason to believe that the controller has drawn or is about to draw his warrant without authority of law, or for a larger amount than the state actually owes, the board must notify the treasurer of state not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislature.

675. *Must examine books of controller and treasurer.*

SEC. 675. As often as it may deem proper the board must examine the books of the controller and treasurer, the accounts and vouchers in their offices, and count the money in the treasury; and for that purpose they may demand, and the controller and treasurer must furnish without delay, all information touching the books, papers, vouchers or matters pertaining to their offices.

676. *Must count money in treasury.*

SEC. 676. The counting of the moneys in the state treasury must take place at least once a month, without the board or any member thereof giving the treasurer any previous notice of the day or hour of counting. The board may at any counting, place any sum in bags or boxes, and weigh each bag or box separately, and mark the same with the weight thereon plainly specified, and place thereon a seal, to be kept by them, and may at subsequent countings count or reweigh each bag or box separately, and estimate the contents of such bags or boxes as part of the money counted by them without making a detailed count of its contents.

677. *Must make affidavit thereof.*

SEC. 677. They must at least once in each month make and file in the office of the secretary of state, and publish in some newspaper in Sacramento city, an affidavit showing:

1. The amount of money that ought to be in the state treasury;
2. The amount and kind of money actually therein.

678. *Controller and treasurer must permit examination and counting.*

SEC. 678. The controller and treasurer must permit the board of examiners to examine the books and papers in their respective offices; and the treasurer must permit the moneys in the treasury, without delay on any pretense whatever, to be counted whenever the board may wish to make an examination or counting.

679. *Printing expert.*

SEC. 679. The board must appoint a printing expert, who must examine and report to the board all accounts for printing presented by the state printer or any other person, specifying whether the work has been executed in a workmanlike manner or not, and the amount for which the same should be allowed. The report is not conclusive on the board, but is in aid of the discharge of their duties. The expert must receive a salary of fifty dollars a month, payable on the last day of each month.

680. *Conversion of school fund into bonds.*

SEC. 680. Whenever and as often as there is in the state treasury the sum of

ten thousand dollars, as proceeds of the sale of state school lands, the board must invest the same in civil funded bonds of this state, or in bonds of the United States, at the lowest price at which they may be offered by the holders thereof, and as prescribed in the succeeding section.

681. *Advertisement.*

SEC. 681. The board must advertise for thirty days in one daily newspaper published in each of the cities of Sacramento and San Francisco for sealed proposals for the purchase of civil bonds or bonds of the United States. At the expiration of thirty days from the first publication of the advertisement the board must open the bids at the time and place specified in the advertisement therefor, in the presence of the treasurer and controller of state. They may accept or reject all bids at their pleasure; but if they accept any bids they must accept the bids offering such bonds at the lowest price; but no bids must be considered unless accompanied by the bonds.

682. *Application of bonds purchased.*

SEC. 682. The board must thereupon certify the accepted bids to the controller, who must draw his warrant in favor of the successful bidders for the amount respectively due, and the state treasurer must pay the same from the proceeds of the sale of school lands, and the board must deliver the bonds so purchased to the state treasurer, who must keep them as a special school fund deposit, the interest upon such bonds to be subject to such disposition as is provided in the title of this code relating to common schools.

683. *Purchase of state bonds.*

SEC. 683. At any sale of civil bonds by the state treasurer the board may become bidders and purchase bonds with the funds at their disposal, and the appropriate transfer of funds must be made by the controller and treasurer on the books of their offices.

684. *Salary of members.*

SEC. 684. The annual salary of each member of the board, except the attorney-general, is one thousand dollars. The annual salary of the attorney-general for services performed under this article is fifteen hundred dollars.

685. *Salary of clerk.*

SEC. 685. The annual salary of the clerk of the board is twelve hundred dollars.

An Act prescribing certain duties to be performed by the state controller, state treasurer, and state board of examiners.

Approved February 20, 1872; 1871-2, 118.

Reports of warrants drawn by controller.

SECTION 1. The state controller shall furnish to the state treasurer, on the tenth, twentieth, and last days of each month, and when either of these days falls upon a day on which the state controller is not required to keep his office open for the transaction of business, then upon the day immediately preceding the days herein mentioned, with a report of all warrants drawn by him upon the treasurer since the date of his last report. Such report shall show the number, date, and amount of each warrant, to whom issued, and the fund out of which it is payable. From the report so furnished by the controller, the state treasurer shall make a register of warrants, and shall pay all warrants in the order in which they are drawn by the controller.

Report of warrants paid by treasurer.

SEC. 2. Upon the last day of each month, except when such last day falls upon a day on which the state treasurer is not required by law to keep his office open for the transaction of business, then upon the day immediately pre-

ceding such last day, the state treasurer shall furnish the state controller with a list of all warrants paid by him since the date on which his last list was furnished. Such list shall contain the number, date, and amount of each warrant, and the fund out of which the same was paid.

Adjustment of balances in treasury.

SEC. 3. Immediately after the passage of this act, it shall be the duty of the state controller and state treasurer, under the supervision of the governor, to ascertain the numbers, dates, and amounts of the several warrants drawn by the controller, and then unpaid by the treasurer, and to adjust the balances in the several funds of the state treasurer upon the books of the controller and treasurer, in accordance with the sums found to the credit of each on the books of the controller, and the warrants found to be outstanding and not paid by the treasurer.

Examiners to count money, etc.

SEC. 4. When the balances in the several funds of the state treasury shall be adjusted as provided for in the next preceding section, the state board of examiners shall count the money in the state treasury, and compare the amount with the amount found to be in all the funds of the state treasury by the books of the state controller, and upon the first business day of each month thereafter the state controller shall furnish the state board of examiners with a statement of the amount of money in each fund of the state treasury, and the total amount as the same appears upon the books of his office, together with a list of warrants issued by him but not paid by the state treasurer, and for the payment of which there is money in the state treasury. Upon the receipt of such statement from the controller, the state board of examiners shall proceed to count the money in the state treasury, and compare the amount with the amount named in the statement of the controller.

Cancellation of warrants uncalled for.

SEC. 5. Whenever any warrant issued by the state controller shall remain in his office uncalled for by the owner thereof for the period of one year after such warrant has become payable, it shall be the duty of the controller and treasurer, in the presence of the state board of examiners, to cancel the same; and whenever any warrant, delivered to the owner thereof by the controller, but not presented to the state treasurer for payment for a period of one year after such warrant has become payable, said warrant shall be deemed to be canceled, and the treasurer shall, in the presence of the controller and state board of examiners, write the word "canceled" opposite the entry of such warrant in his registry of warrants provided for in the first section of this act. The word "canceled" shall also be written by the state controller opposite the entry in the warrant register in his office, of all warrants required to be canceled by this act. The amounts of all warrants canceled under the provisions of this act shall revert to the fund in the state treasury against which said warrants were drawn, and shall be entered upon the books of the controller to the credit of such fund, in the same manner as other moneys paid into the state treasury.

Register of canceled warrants—Reissue.

SEC. 6. The controller and treasurer shall each keep a register of warrants canceled under this act, in which shall be entered the number, date, and amount of the warrants, the name of the person in whose favor it was drawn, the fund out of which it was payable, and the date of cancellation. Whenever the owner of any warrant canceled under the provisions of this act demands such warrant from the controller, it shall be the duty of the controller to issue a new warrant for the same amount, in the name of the same person, and payable out of the same fund as the warrant canceled; and in case where a warrant

issued by the controller, but not paid by the treasurer, has been canceled, and the owner or holder thereof presents the same for payment, it shall be the duty of the state controller to draw a new warrant therefor, in the name of the same person, for the same amount, and payable out of the same fund as the original warrant, and such original warrant shall thereupon be canceled by him and retained in his office as his voucher for issuing such new warrant. In all cases where a warrant shall be issued in lieu of one canceled, the word "duplicate" shall be plainly written or printed across the face thereof, in red ink, by the controller, and the issue thereof noted on the registry of canceled warrants kept in his office, and when any such duplicate warrant is paid by the state treasurer he shall note the payment thereof on the registry of canceled warrants kept in his office.

Interest coupons.

SEC. 7. Whenever the interest coupons attached to any registered bond of this state issued under either of the following named acts, to wit: an Act to provide for paying certain equitable claims against the State of California, and to contract a funded debt for that purpose, approved April 28, 1857; an Act to amend an act entitled an act to provide for paying certain equitable claims against the State of California, and to contract a funded debt for that purpose, approved April 28, 1857, approved April 27, 1860; an Act for the relief of the enlisted men of the California volunteers in the service of the United States, approved April 27, 1863; an Act granting bounties to the volunteers of this state, enlisted in the service of the United States, for issuing bonds to provide funds for the payment of the same, and to levy a tax to pay such bonds, approved April 4, 1864; and an Act authorizing the issuance of state bonds to the amount of two hundred and fifty thousand dollars, to be known as state capitol bonds, approved April 4, 1870, shall not be presented to the state treasurer for payment for a period of one year after such coupon has become due and payable, it shall be the duty of the state treasurer to furnish the state controller and state board of examiners each with a list of such coupons not presented for payment, with the amount thereof, whereupon the state controller shall order the treasurer to place the money held by him for the payment of such coupons into the general fund of the state treasury, and the amount so ordered into the general fund shall be placed to the credit of said fund on the books of the controller and treasurer in the same manner as other moneys paid into the state treasury.

Payment of interest coupons.

SEC. 8. Whenever any of the interest coupons mentioned in the seventh section of this act are presented for payment, after the money to pay the same has been transferred to the general fund, such coupons shall be presented to the state board of examiners, which board shall audit and allow them out of the general fund of the state treasury, and shall transmit a voucher to the state controller upon which to draw his warrant upon the state treasurer. Upon the presentation of such warrant and the surrender to him of the coupons for the payment of which the said warrant is drawn, the state treasurer shall pay the same out of the general fund.

SEC. 9. Immediately after the passage of this act the state board of examiners shall examine the books in the state treasurer's office in which are pasted the coupons of the registered bonds of the state paid by him, and shall require the state treasurer to make out a list of all coupons not found therein, as provided for in section seven of this act, and the money held by him for the payment thereof shall be placed in the general fund as provided in this act.

SEC. 10. This act shall take effect from and after its passage.

An Act to provide for the purchase of certain supplies for state officers and members of the legislature.

Approved March 16, 1876; 1875-6, 314.

Board of examiners constituted a furnishing board.

SECTION 1. The state board of examiners is hereby constituted ex officio a furnishing board, with the powers and duties hereinafter specified.

To advertise for bids to furnish supplies.

SEC. 2. It shall be the duty of said board, as often as it shall become necessary, to advertise for twenty days in two daily newspapers published in the city of San Francisco, and one daily newspaper published in the city of Sacramento, for sealed proposals to furnish stationery, blank books, material for lights, fuel, and such other articles necessary for the use of said state and legislative officers as are entitled thereto, or any of them; and said board shall specify in said advertisement the amount and kinds of each article desired, samples or minute descriptions of which shall accompany and be deposited, with the sealed proposals for furnishing the same, in the office of the secretary of state; and all proposals received as aforesaid shall be opened and compared by said board, any two of whom shall constitute a quorum, at the governor's office, at twelve o'clock M. of the day specified in the said advertisement; and the said board shall then and there award the contract for furnishing said supplies, or any of them, to the lowest bidder, whose sealed bid shall be accompanied by a bond with two or more sureties, in the sum of \$——, the sum to be not less than twice the amount of the value of the articles to be supplied, payable to the people of the State of California, conditioned that if the bidder shall receive the award of said contract he will, in ten days thereafter, deliver the supplies or articles for which he has been awarded the contract; provided, that in their said advertisement said board may classify said supplies and articles, and may receive bids and award contracts for such separate articles or class of supplies as they shall deem the lowest and best; provided further, that said board may require any class or articles of said supplies to be delivered in installments, and paid for on delivery; provided further, that any and all bids which shall be deemed too high by said board may be declined, in which case said board shall again advertise for sealed proposals to furnish the classes or articles of supply so declined, and so on for the same cause, as often as it shall occur; and provided further, that in such case, said board may purchase any articles or supplies for which bids have been rejected as aforesaid, in open market, and in amounts sufficient for immediate necessities, but at prices not exceeding the lowest prices in the bids rejected.

Secretary of state to open stationery accounts.

SEC. 3. It shall be the duty of the secretary of state, immediately after the passage of this act, to take a full and complete inventory of all stationery, blank books, and other articles and supplies aforesaid, then on hand, and enter the same in a set of books to be kept for that purpose, making a separate account for each class of articles; and in like manner he shall enter in said books a detailed and classified account of all purchases of articles and supplies authorized by this act, showing the amount and cost of each article and class of supplies purchased, the amount and cost of each class issued, amount and cost of each article and class issued to each state officer and member of the legislature, and amount and cost of each article and class on hand. He shall issue the supplies aforesaid only upon the requisition of the proper officer, and shall take a receipt for the same upon delivery, which requisition and receipt shall be filed and preserved in his office.

Board to take inventory of supplies.

SEC. 4. It shall be the duty of said board, at the end of each fiscal year, and at such other times as they shall deem necessary, to cause an inventory to be taken of all the articles and classes of said supplies on hand and contracted for, and to make an examination of the amounts and vouchers appertaining to the same.

Board to report to legislature.

SEC. 5. It shall be the duty of said board, at least one month previous to the assembling of each legislature, to advertise, in accordance with section two of this act, for a supply of stationery, fuel, and such other articles as shall be sufficient for the use of the state officers and members of the legislature, or necessary for the public service, and at the commencement of each session said board shall report to the legislature a full account of their receipts and expenditures, and stock of supplies on hand.

Expenses of board.

SEC. 6. The actual expenses incurred by said board in executing the powers and discharging the duties prescribed and imposed in this act, when certified by them, shall be audited by the controller, and paid by the treasurer of said state out of any money which shall have been appropriated for that purpose; provided, nothing in this act shall be construed as allowing salary or compensation to said furnishing board for any service performed as such board.

SEC. 7. All acts and parts of acts in conflict with this act are hereby repealed.

ARTICLE XIX.

POWERS AND DUTIES OF OTHER EXECUTIVE OFFICERS.

695. *Vaccine agent.*

SEC. 695. The powers and duties of the vaccine agent are prescribed in Title VII of Part III of this Code. [See post, 2993-2994.]

696. *Commissioner of immigration.*

SEC. 696. Those of the commissioner of immigration are prescribed in Title VII, Part III of this Code. [See post, 2964-2968.]

697. *State capitol commissioners.*

SEC. 697. Those of the state capitol commissioners are prescribed by "An Act to provide for the construction of the state capitol in the city of Sacramento," approved March twenty-ninth, eighteen hundred and sixty, and the acts amendatory thereof, which are hereby continued in force.

698. [SEC. 698,^(a) relating to the tide land commissioners, was repealed by act of February 4, 1876; Amendments, 1875-6, 15; took effect from passage. See the act, ante, 365.]

699. *Port wardens.*

SEC. 699. Those of port wardens are prescribed in Title VI of Part III of this Code. [See post, 2501-2511.]

700. *Harbor commissioners.*

SEC. 700. Those of harbor commissioners are prescribed in Title VI of Part III of this Code. [See post, 2521-2572.]

(a) Repealed section:

SEC. 698. Those of the tide land commissioners are prescribed by "An Act to survey and dispose of certain salt marsh and tide lands belonging to the State of California," approved March thirtieth, eighteen hundred

and sixty-eight, and the acts amendatory thereof, approved April first, eighteen hundred and seventy, which are hereby continued in force.

The acts referred to in this repealed section were also repealed by the act of February 4, 1876; see ante, 365.

701. *Pilots.*

SEC. 701. Those of pilots are prescribed in Title VI of Part III of this Code. [See post, 2429-2491.]

702. [SEC. 702,^(a) relating to the San Francisco marine board, was repealed by act of January 13, 1876; Amendments, 1875-6, 14; took effect immediately.]

703. *Pilot commissioners.*

SEC. 703. Those of pilot commissioners are prescribed in Title VI of Part III of this Code. [See post, 2429-2591.]

704. *Boards of health.*

SEC. 704. Those of the boards of health are prescribed in Title VII of Part III of this Code. [See post, 2978-3082.]

705. *Board of agriculture.*

SEC. 705. Those of the board of agriculture are prescribed in the special statute creating the board.

706. *Board of equalization.*

SEC. 706. Those of the board of equalization are prescribed in Title IX of Part III of this Code. [See post, 3672-3705.]

707. *Regents of university.*

SEC. 707. Those of the regents of the university of California in Chapter I of Title III of Part III. [See post, 1425-1451.]

708. *State board of education.*

SEC. 708. Those of the state board of education are prescribed in Chapter III of Title III of Part III of this Code. [See post, 1517-1532.]

709. *Trustees of normal school.*

SEC. 709. Those of the trustees of the state normal school are prescribed in Chapter II of Title III of Part III of this Code. [See post, 1487-1507.]

710. *Officers of libraries.*

SEC. 710. Those of the trustees of the state library, state librarian and librarian of the supreme court library, are prescribed in Chapter III of Title V of Part III of this Code. [See post, 2292-2316.]

711. *Directors of state prison.*

SEC. 711. Those of the directors of the state prison are prescribed in Part III of THE PENAL CODE. [See post, 14,573-14,595.]

712. *Officers of insane asylum.*

SEC. 712. Those of the directors and other officers of the insane asylum are prescribed in Chapter I of Title V of Part III of this Code. [See post, 2136-2222.]

713. *Trustees of asylum for deaf, dumb, and blind.*

SEC. 713. Those of the trustees of the asylum for the deaf, dumb, and blind, are prescribed in Chapter II of Title V of Part III of this Code. [See post, 2237-2282.]

714. *Trustees of state burying grounds.*

SEC. 714. Those of the trustees of the state burying grounds are prescribed in Title VIII of Part III of this Code. [See post, 3597.]

715. *Yosemite and Big Tree commissioners.*

SEC. 715. Those of the commissioners of the Yosemite valley and the Mariposa big tree grove are prescribed in Title VIII of Part III of this Code. [See post, 3584-3586.]

(a) Repealed section:

SEC. 702. Those of members of the marine board for

the port of San Francisco are prescribed in Title VI of Part III of this Code.

CHAPTER IV.

JUDICIAL OFFICERS.

726. *Number, designation, and mode of election.*

SEC. 726. The number, designation, and mode of election of judicial officers are fixed in Title I, Part I of THE CODE OF CIVIL PROCEDURE. [See post, 10,033.]

CHAPTER V.

SALARIES OF JUSTICES OF THE SUPREME COURT AND DISTRICT JUDGES, AND OFFICERS CONNECTED WITH THE SUPREME COURT.

736. *Salary of justices of supreme court.*

SEC. 736. The annual salary of each justice of the supreme court is six thousand dollars.

737. *Salary of district judges.*

SEC. 737. The annual salaries of the judges of the third, fourth, sixth, twelfth, fifteenth, and nineteenth judicial districts are six thousand dollars each. [*Amendment, approved March 30, 1874; Amendments 1873-4, 12; took effect July 6, 1874.*^(a)]

738. *Salary of district judges.*

SEC. 738. The annual salaries of the judges of the other districts are five thousand dollars each.

An Act to regulate the salary of the district judge of the sixteenth judicial district.

Approved March 30, 1872; 1871 2, 796.

Salary of sixteenth district judge.

SEC. 1. The salary of the district judge of the sixteenth judicial district of the State of California shall be five thousand dollars per annum from and after the first day of January, A. D. eighteen hundred and seventy-four.

[The salary of the district judge of the twenty-first judicial district is fixed at four thousand dollars per annum by section 6 of the act of February 15, 1876; 1875-6, 58, creating that district. See ante, 142.]

The salary of the district judge of the twenty-second judicial district is fixed at five thousand dollars per annum by section 6 of the act of March 29, 1876; 1875-6, 528, creating that district. See ante, 142.]

739. *Salaries of officers connected with the supreme court.*

SEC. 739. The annual salaries of the officers connected with the supreme court are as follows:

- The reporter of the decisions, six thousand dollars;
- The phonographic reporter, three thousand dollars;
- The secretary, three thousand dollars;
- The bailiff, twelve hundred dollars.

CHAPTER VI.

MINISTERIAL AND OTHER OFFICERS CONNECTED WITH THE COURTS.

ARTICLE I. CLERK OF THE SUPREME COURT	749
II. REPORTERS OF THE SUPREME COURT	767
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(a) The original section did not include the third and nineteenth judicial districts.

ARTICLE I.

CLERK OF THE SUPREME COURT.

749. *Election and term of office.*

SEC. 749. The clerk of the supreme court is elected at the same time the governor is elected, and holds his office for the term of four years from and after the first Monday in December next succeeding his election.

750. *General duties.*

SEC. 750. The clerk of the supreme court must perform such duties as are prescribed in the Penal Code and Code of Civil Procedure, and such duties as may be required of him by the rules and practice of the court.

751. *May appoint two deputies.*

SEC. 751. He may appoint two deputies. [*Amendment, approved January 20, 1876; Amendments 1875-6, 23; took effect immediately.*^(a)]

752. *Fees.*

SEC. 752. He must collect, in United States coin, the following fees:

For each civil case appealed to the supreme court, fifteen dollars (payable when the transcript is filed), in full for all services rendered in each case up to and including remittitur to court below;

For dismissing on clerk's certificate, two dollars and fifty cents;

For all services rendered in each original proceeding, ten dollars;

For certificate of admission as attorney and counselor, ten dollars;

For making and certifying each copy of any paper, document, or record in his office, the sum of fifteen cents per folio; but this fee must not be taxed against the parties to suits for any paper or copies of papers necessary up to and including the remittitur.

753. *Disposition of fees.*

SEC. 753. All fees collected by him, except such as may be collected under the laws in force prior to the first day of December, eighteen hundred and sixty-seven, must be paid into the state treasury; eighty per cent. thereof to the credit of the general fund, and twenty per cent. thereof to the credit of the supreme court library fund.

754. *Settlements, when and how made.*

SEC. 754. He is responsible and must account for, and in his settlements with the controller must be charged with, the full amount of all fees collected or chargeable and accruing in causes brought into the court for services rendered therein up to the time of each settlement (except such fees as are collected under the laws referred to in the preceding section), and must at the end of every month pay the same into the state treasury. He must also, at the end of every month, render to the controller of state, in such form as that officer prescribes, an account in detail, under his own oath, of all fees chargeable and accruing in causes brought into court and not included in his previous accounts rendered. His salary must not be allowed or paid until all fees so accruing, and for which he is chargeable, have been accounted for and paid over.

755. *Salary of clerk.*

SEC. 755. The annual salary of the clerk of the supreme court is four thousand dollars.

756. *Salary of deputies.*

SEC. 756. The annual salary of the deputy clerks is eighteen hundred dollars. The salary of one of said deputies shall be paid by the city and county

(a) The original section instead of "two deputies" had the words "one deputy."

of San Francisco. [*Amendment, approved January 20, 1876; Amendments 1875-6, 23; took effect immediately.*^(a)]

757. Official bond.

SEC. 757. The clerk of the supreme court must execute an official bond in the sum of ten thousand dollars.

ARTICLE II.

REPORTERS OF THE SUPREME COURT.

767. Reporter of decisions, appointment and term.

SEC. 767. The supreme court may, by an order entered upon the minutes, appoint a reporter of its decisions, to hold office at its pleasure.

768. Affidavit to be made by appointee before order is entered.

SEC. 768. After the order is made, and before it is entered on the minutes, the person named therein must take and file with the clerk an affidavit as follows:

“I do swear that I have neither solicited nor procured any other person to advise, suggest, counsel or solicit my appointment to the position of reporter of the decisions of this court.”

769. Phonographic reporter, appointment and term.

SEC. 769. The supreme court may also, in like manner, appoint a phonographic reporter for the court, to hold office at its pleasure.

770. Duties of phonographic reporter.

SEC. 770. It is the duty of the phonographic reporter to attend upon the court during its sessions, and to:

1. Note the points made by counsel in oral arguments;
2. To take down all opinions of the court delivered orally;
3. Write out his notes in longhand, upon the order of the court, and deliver such writing to the reporter of the decisions of the court;
4. Perform such other duties as may be imposed upon him by the court or a justice thereof.

771. General duties of reporter of decisions.

SEC. 771. The reporter of the decisions of the supreme court must prepare a report of such cases decided as he may by the court be directed to report.

772. Reports from phonographic notes.

SEC. 772. He must, from the notes delivered to him by the phonographic reporter, prepare a report of each of the cases included therein, and after preparing such report, must submit it to the court for correction and approval.

773. Reports, what to include.

SEC. 773. Each report must be made in manner and form as the court may direct.

774. Justices must supervise publication.

SEC. 774. The reports must be published under the supervision of the court, and to that end each of the justices must be furnished by the reporter with proof sheets of each volume thirty days before its final publication.

775. Proof sheets.

SEC. 775. Within thirty days after such proof sheets are furnished, the justices may return them to the reporter with corrections or alterations, and he must make the corrections or alterations accordingly.

776. Original papers.

SEC. 776. The reporter may take the original opinions and papers in each case

(a) The original section had the word “clerk” instead of “clerks” and did not have the last sentence.

from the clerk's office, and retain them in his possession not exceeding sixty days.

777. Style of reports.

SEC. 777. The reports must be published in well-bound volumes, and must be printed on good book paper, in small pica, leaded, and brevier, equal in quality of paper and binding to volumes thirty-three to thirty-nine, inclusive, of California Reports. [*Amendment, approved March 24, 1874; Amendments 1873-4, 68; took effect from passage; repealed conflicting acts.*^(a)]

778. To be published by contract.

SEC. 778. The reporter shall have no pecuniary interest in the volumes of reports, but they must be published under the supervision of the court and reporter, by contract, to be entered into by the reporter, secretary of state, and attorney-general, with the person or persons who shall agree to publish and sell the said reports, for a period of ten years, on the terms most advantageous to the state and the public, and at a rate not to exceed four dollars per volume of seven hundred pages. [*Amendment, approved March 24, 1874; Amendments 1873-4, 68; took effect from passage; repealed conflicting acts.*^(b)]

[Secs. 779 and 780, as originally enacted,^(c) were repealed by act of March 24, 1874, and the following new sections substituted in their place:]

779. Advertising for proposals.

SEC. 779. Before entering into said contract, it shall be the duty of the secretary of state to advertise for proposals for the publication of said reports, for thirty days, in one daily paper in Sacramento, and one daily paper in San Francisco. It shall be the duty of said reporter, secretary of state, and attorney-general, to consider all proposals for the publication of said reports which may be made to them, and to award the contract to the person or persons who may agree to publish and sell the same on the terms most advantageous to the state and public. [*New (substituted) section, approved March 24, 1874; Amendments 1873-4, 69; took effect from passage; repealed conflicting acts.*]

780. Contract, what to require.

SEC. 780. The contract must require the publisher to print and publish each volume in the style required by section seven hundred and seventy-seven, within sixty days from the time at which the manuscript is delivered by the reporter, to sell three hundred copies to the state at the price fixed in the contract, and to keep on hand and for sale, at the price stipulated in the contract, a sufficient number of copies of each volume to supply all demands for six years from the publication thereof, and to give bonds for the fulfillment of the terms of the contract, in the sum of ten thousand dollars. [*New (substituted) section, approved March 24, 1873-4; Amendments 1873-4, 69; took effect from passage; repealed conflicting acts.*]

781. Secretary of state to purchase volumes for use of state.

SEC. 781. On the publication of each volume of reports, the secretary of state must purchase, for the use of the state, three hundred copies of said volume at

(a) Original section:

SEC. 777. The reports must be published in well-bound volumes, and must be printed on good book paper, in long primer leaded, except the title-page, the table of cases, the synopsis, and index.

The section was amended by act of March 30, 1874 (Amendments 1873-4, 12) so as to read as below; but by operation of section 117 of the amendatory act of March 30, 1874 (see Amendments 1873-4, 60; post 4457) the amendment of March 24, 1874 (given in the text) superseded both the original section and the following amendment of March 30, 1874:

SEC. 777. The reports must be published in well-bound volumes, and must be printed on good book

paper, in long primer leaded, except the title-page, the table of cases, the synopsis, and index. The reporter must copyright each volume of the reports in his own name; but such copyright shall be the property of the state.

(b) Original section:

SEC. 778. An edition of twelve hundred copies of each volume must be published.

(c) Original sections:

SEC. 779. The printing and binding must be done by the state printer.

SEC. 780. The reporter must, as soon as it is published, deliver to the secretary of state the whole of the edition.

the price named in the contract, not exceeding four dollars per volume, and after having distributed the same, as required by section four hundred and ten, shall deposit the surplus copies, if any there be, in the state library. [*Amendment, approved March 24, 1874; Amendments 1873-4, 70; took effect from passage; repealed conflicting acts.*]^(a)

782. Duty of secretary of state, when the proposals are received.

SEC. 782. If, after advertising as required by section seven hundred and seventy-nine, no proposals are received by the secretary of state agreeing to print, publish, and sell said volumes at a price not exceeding four dollars per volume, then the state printer must print and bind twelve hundred copies of each volume, and deliver to the secretary of state all the copies printed by him; and the secretary of state must keep the copies of the edition not distributed under the provisions of section four hundred and ten on sale at four dollars per volume, at retail, and at such wholesale price as may be fixed by the governor, controller, and secretary of state, and must, at the end of each month, pay into the state treasury the proceeds of all sales made by him. This act shall not apply to any volume of reports, the printing of which may have been commenced by the state printer at the time the contract herein provided for is made. [*New section, approved March 24, 1874; Amendments 1873-4, 70; took effect from passage; repealed conflicting acts.*]

ARTICLE III.

NOTARIES PUBLIC.

791. Number of notaries.

SEC. 791. The governor must appoint and commission notaries public as follows:

For the county of San Francisco, twenty-two;

For the counties of Alameda, Sacramento, San Joaquin, Santa Clara, Amador, Butte, Calaveras, Contra Costa, El Dorado, Los Angeles, Monterey, Nevada, Placer, Santa Cruz, Solano, Sonoma, Tuolumne, Yolo, and Yuba, twenty each; for each of the other counties, fifteen. [*Amendment, approved March 30, 1874; Amendments 1873-4, 13; took effect July 6, 1874.*]^(b)

Additional notaries in Fresno, Tulare and Humboldt counties.

An Act to provide for the appointment of additional notaries public in the counties of Fresno, Tulare and Humboldt.

Approved January 9, 1874; 1873-4, 20.

SECTION 1. The governor shall have the power and is hereby authorized to

(a) Original section:

SEC. 781. The secretary of state must keep on sale, at four dollars per volume, the copies of the edition not distributed under the provisions of section 410, and must, at the end of each month, pay into the state treasury the proceeds of all sales made by him.

The section was amended by act of March 30, 1874 (Amendments 1873-4, 13), so as to read like the original section with the exception of the words "three dollars" instead of "four dollars;" but by operation of section 117 of the amendatory act of March 30, 1874 (see Amendments 1873-4, 60; post 4457), the amendment of March 24, 1874 (given in the text) superseded both the original section and the amendment of March 30, 1874.

(b) Original section:

SEC. 791. The governor of the state must appoint and commission notaries public as follows: For the counties of Alameda and Sacramento, twelve each; for the counties of Amador, Contra Costa, Mariposa, Monterey, Napa, San Diego, and Stanislaus, eight each; for the counties of Alpine, Colusa, Del Norte, Fresno, Humboldt, Inyo, Klamath, Lake, Lassen, Mono, Plumas, San Bernardino, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sutter, Tehama, Trinity, Tulare, and Yolo, five each; for the counties of Butte, Calaveras, El Dorado, Sierra, and Tuolumne, thirteen each; for the counties of Kern, Marin, and Merced, seven each; for the county of Los Angeles, nine—one to reside on Santa Catalina Island; for the

counties of Mendocino, Placer, and Yuba, ten each; for the county of Nevada, eighteen; for the county of San Francisco, twenty-one; for the counties of San Joaquin and Siskiyou, fifteen each; for the county of Santa Clara, eight—two to reside in Santa Clara Township, and one in Gilroy Township; for the county of Solano, nine; for the county of Sonoma, nine—one to reside in Healdsburg.

The number of notaries public provided for by the original section just given was increased by special acts in 1872, as follows:

County.	No.	Date of Act.	Page.
Butte	Two.	Jan. 26, 1872.....	1871-2, 26
Contra Costa	Three.	Feb. 1, 1872	1871-2, 46
Humboldt	Three.	Feb. 26, 1872	1871-2, 159
Monterey.....	Two.	March 30, 1872....	1871-2, 792
Plumas.....	One.	March 8, 1872....	1871-2, 304
Placer.....	Two.	Jan. 20, 1872....	1871-2, 33
Sacramento	Four.	April 1, 1872.....	1871-2, 881
San Diego.....	Three.	March 4, 1872.....	1871-2, 238
San Francisco.....	One.	March 1, 1872.....	1871-2, 184
Sonoma.....	One.	Feb. 13, 1872.....	1871-2, 95
Solano	Two.	Jan. 18, 1872....	1871-2, 24
Ventura	Five.	March 22, 1872...	1871-2, 489

appoint and commission four notaries public in each of the counties of Fresno, Tulare and Humboldt, in addition to the number now authorized by law to be appointed in said counties, who shall hold their offices for the period of two years and until their successors shall have been appointed and qualified.

SEC. 2. This act shall take effect from and after its passage.

Additional notaries in Santa Clara, Napa, Santa Barbara, San Luis Obispo and Sonoma counties.

An Act to provide for the appointment of additional notaries public in some of the counties of this state.

Approved January 19, 1874; 1873-4, 30.

SECTION 1. The governor is hereby authorized to appoint and commission notaries public in the following counties, in addition to those now authorized by law: In the county of Santa Clara eight, one of whom shall have his place of business at Mayfield, one at San Felipe, one at Milpitas, one at Saratoga, and one at Gilroy township, and one at Mountain View. In the county of Napa, one to reside at Yountville. In the counties of Santa Barbara and San Luis Obispo, three each. In the county of Sonoma two, one to reside at Pine Flat.

SEC. 2. This act shall take effect immediately.

Notaries in San Benito county.

An Act to create the county of San Benito, to establish the boundaries thereof, and to provide for its organization.

Approved February 12, 1874; 1873-4, 95.

SEC. 14. San Benito county shall be entitled to five notaries public, as provided by law.

Additional notaries in Stanislaus county.

An Act to add five notaries public in Stanislaus county.

Approved February 17, 1874; 1873-4, 108.

SECTION 1. That in addition to the notaries public now provided for by law, the governor shall appoint five additional notaries public for the county of Stanislaus.

SEC. 2. This act shall take effect from and after its passage.

Notaries in Modoc county.

An Act to create the county of Modoc, to establish the boundaries thereof, and to provide for its organization.

Approved February 17, 1874; 1873-4, 124.

SEC. 15. Modoc county shall be entitled to five notaries public, as provided by law.

Additional notary in San Francisco city and county.

An Act to provide for the appointment of an additional notary public for the city and county of San Francisco, for the accommodation of the inhabitants of said city and county residing south of Market street.

Approved February 20, 1874; 1873-4, 139.

SECTION 1. The governor is authorized to appoint and commission one additional notary public for the city and county of San Francisco, who, when duly qualified under and according to the laws of the state governing notaries public, shall be invested with all the official powers and qualifications, and subject to all the duties and liabilities of other notaries public lawfully appointed, commissioned and qualified for said city and county.

SEC. 2. Said notary public shall keep an office for the transaction of business in that portion of the city and county of San Francisco south of Market street.

SEC. 3. This act shall take effect and be in force from and after its passage.

Additional notary for Los Angeles county.

An Act to provide for the appointment of an additional notary public for the county of Los Angeles.

Approved March 10, 1874; 1873-4, 327.

SECTION 1. For the county of Los Angeles, an additional notary public shall be appointed by the governor, to reside at Anaheim, who shall hold office for the term of two years, and until his successor is appointed and qualified.

SEC. 2. This act shall take effect and be in force on and after its passage.

Additional notaries in Inyo county.

An Act to provide additional notaries public in the county of Inyo.

Approved March 24, 1874; 1873-4, 574.

SECTION 1. The governor is hereby authorized to appoint two additional notaries public in and for the county of Inyo; and said notaries, when appointed, shall hold office under and by virtue of all the laws now or hereafter pertaining to said officers.

SEC. 2. This act shall take effect from and after its passage.

792. Restrictions as to residence.

SEC. 792. Every person appointed as notary public must at the time of his appointment be an elector of the county for which he is appointed, and must continue to reside in such county.

793. Term of office.

SEC. 793. The term of office of a notary public is two years from and after the date of his commission.

794. General duties of.

SEC. 794. It is the duty of notaries public:

1. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries;
2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, indorsed on or attached to the instrument;
3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state;
4. To keep a record of all official acts done by them;
5. To keep a record of the parties to, date, and character of every instrument acknowledged or proved before them;
6. When requested, and upon payment of their fees therefor, to make and give a certified copy of any record in their office;
7. To provide and keep official seals, upon which must be engraved the arms of this state, the words "notary public," and the name of the county for which they are commissioned;
8. To authenticate with their official seals all official acts.

795. Protest prima facie evidence of facts stated.

SEC. 795. The protest of a notary, under his hand and official seal, of a bill of exchange, or promissory note, for non-acceptance, or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of

exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note and of the party to whom the same was given, and the post-office nearest thereto, is *prima facie* evidence of the facts contained therein. [*Amendment, approved March 30, 1874; Amendments 1873-4, 13; took effect July 6, 1874.*^(a)

796. *Records of, on death or resignation.*

SEC. 796. If any notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the clerk of the county, who must deliver them to the notary's successor, when qualified.

797. *Certified copies of records of a predecessor.*

SEC. 797. Every notary having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor could have done.

798. *Fees.*

SEC. 798. The fees of notaries are as follows: For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars. For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar. For recording every protest, one dollar. For drawing an affidavit, deposition, or other paper, for which provision is not herein made, for each folio, thirty cents. For taking an acknowledgment, or proof of a deed, or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents. For administering an oath or affirmation, fifty cents. For every certificate, to include writing the same and the seal, one dollar. [*Amendment, approved March 16, 1874; Amendments 1873-4, 71; took effect from passage.*^(b)

799. *Official bond.*

SEC. 799. Each notary must execute an official bond in the sum of five thousand dollars, which bond must be approved by the county judge of his county, and filed and recorded as other official bonds of county officers.

800. *Certificate of filing bond and oath.*

SEC. 800. Each notary, as soon as he has taken his official oath and filed his official bond, must transmit a certificate of the facts, under the hand and seal of the county clerk, to the office of the secretary of state.

801. *Liabilities on official bond.*

SEC. 801. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained.

ARTICLE IV.

COMMISSIONERS OF DEEDS.

811. *Governor to appoint.*

SEC. 811. The governor may appoint in each state of the United States, or in any foreign state, one or more commissioners of deeds, to hold office for the term of four years from and after the date of their commission.

(a) The original section used the word "primary" instead of "*prima facie*."

(b) The original section provided for only one half the amount of fees allowed by the amendment, except that for drawing papers not otherwise specially pro-

vided for, twenty cents for each folio was allowed, and for an acknowledgment or proof of a deed or other instrument fifty cents for the first signature including seal and certificate and twenty-five cents for each additional signature.

812. General duties of.

SEC. 812. Every commissioner of deeds has power within the state for which he is appointed:

1. To administer and certify oaths;
2. To take and certify depositions and affidavits;
3. To take and certify the acknowledgment or proof of powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record;
4. To provide and keep an official seal, upon which must be engraved the arms of this state, the words "Commissioner of Deeds for the State of California," and the name of the state for which he is commissioned;
5. To authenticate, with his official seal, all his official acts.

813. Effect of acts done by commissioners.

SEC. 813. All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified by commissioners of deeds, have the same force and effect, to all intents and purposes, as if done and certified in this state by any officer authorized by law to perform such acts.

814. Oath, when to be filed.

SEC. 814. The official oaths of commissioners of deeds must be filed in the office of the secretary of state within six months after they are taken.

815. Fees.

SEC. 815. The fees of commissioners of deeds are the same as those prescribed for notaries public.

816. List of commissioners to be published.

SEC. 816. The names of all persons appointed commissioners must be published three times in some weekly newspaper published at the seat of government of the state.

817. Copy of this article to be transmitted to appointee.

SEC. 817. The secretary of state must transmit, with the commission to the appointee, a certified copy of this article, and of section 798.

ARTICLE V.

OTHER OFFICERS.

827. Court commissioners.

SEC. 827. The mode of appointment, powers, and duties of court commissioners are fixed by Chapter II, Title III, Part I of THE CODE OF CIVIL PROCEDURE. [See post, 10,258.]

828. Secretary and bailiff of the supreme court.

SEC. 828. The mode of appointment, powers, and duties of the secretary and bailiff of the supreme court are fixed by Chapter II, Title IV, Part I of THE CODE OF CIVIL PROCEDURE. [See post, 10,265.]

829. Phonographic reporters.

SEC. 829. The mode of appointment, powers, and duties of phonographic reporters are fixed by Chapter III, Title IV, Part I of THE CODE OF CIVIL PROCEDURE, and sections 769 and 770 of this Code. [See post, 10,269.]

830. Clerks, sheriffs, coroners, and other county officers, etc.

SEC. 830. The mode of election of clerks, sheriffs, coroners, and other county and township officers is fixed by Part IV of this Code. [See post, 3901.]

831. Attorneys and counselors at law.

SEC. 831. The admission of attorneys and counselors at law is provided for and their duties fixed in Chapter I, Title V, Part I of THE CODE OF CIVIL PROCEDURE. [See post, 10,275.]

CHAPTER VII.

GENERAL PROVISIONS RELATING TO DIFFERENT CLASSES OF OFFICERS.

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ARTICLE I.

DISQUALIFICATIONS.

841. *Age and citizenship.*

SEC. 841. No person is capable of holding a civil office who at the time of his election or appointment is not of the age of twenty-one years and a citizen of this state.

An Act to make women eligible to educational offices.

Approved March 12, 1874; 1873-4, 356.

Women eligible.

SECTION 1. Women, over the age of twenty-one years, who are citizens of the United States and of this state, shall be eligible to all educational offices within the state, except those from which they are excluded by the constitution.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed. This act shall take effect from and after its passage.

842. *Other disqualifications.*

SEC. 842. Provisions respecting disqualification for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices.

843. *County officer not to act as deputy of another officer.*

SEC. 843. No county officer must be appointed or act as the deputy of another officer of the same county, except in cases where the pay of the officer so appointed amounts to a sum less than seventy-five dollars per month. [*Amendment, approved March 15, 1876; Amendments 1875-6, 23; took effect from passage.*^(a)]

ARTICLE II.

RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.

852. *Certain officers must reside in Sacramento.*

SEC. 852. The following officers must reside at and keep their offices in the city of Sacramento: The governor; secretary of state; controller; treasurer of state; attorney-general; surveyor-general; state printer; superintendent of public instruction; justices of the supreme court; clerk of the supreme court; reporters of the supreme court; and adjutant-general.

853. *Absence from the state.*

SEC. 853. No officer mentioned in the preceding section must absent himself

(a) The original was a new section added by act of 6, 1874. It did not have the last clause commencing March 30, 1874; Amendments 1873-4, 14; took effect July with the words "except in cases where."

from the state for more than thirty days, unless upon business of the state or with the consent of the legislature.

854. *Restrictions upon judicial officers.*

SEC. 854. Restrictions upon the residence of other judicial officers are contained in THE CODE OF CIVIL PROCEDURE.

855. *Restrictions upon county officers.*

SEC. 855. Restrictions upon the residence of county officers are contained in Part IV of this Code. [See post, 4101 and 4119.]

ARTICLE III.

POWERS OF DEPUTIES.

865. *Powers of deputies.*

SEC. 865. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

ARTICLE IV.

APPOINTMENT AND DURATION OF TERMS.

875. *Appointments, when not otherwise provided for.*

SEC. 875. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor.

876. *Deputies and subordinate officers.*

SEC. 876. All assistants, deputies and other subordinate officers, whose appointments are not otherwise provided for, must be appointed by the officer or body to whom they are respectively subordinate.

877. *Number of deputies.*

SEC. 877. When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

878. *Term of office, when not prescribed.*

SEC. 878. Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

879. *Holding over until successor is qualified.*

SEC. 879. Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

ARTICLE V.

NOMINATIONS AND COMMISSIONS OF OFFICERS.

889. *Nominations to senate must be in writing.*

SEC. 889. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

890. *Resolution of concurrence.*

SEC. 890. Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state, and another copy, certified by the secretary, to the governor.

891. *Commissions by the governor.*

SEC. 891. The governor must commission:

1. All officers elected by the people whose commissions are not otherwise provided for;

2. All officers elected by the legislature;
3. All officers of the militia;
4. All officers appointed by the governor, or by the governor with the advice and consent of the senate;
5. United States senators.

892. *Form of commissions.*

SEC. 892. The commissions of all officers commissioned by the governor must be issued in the name of the people of this state, and must be signed by the governor and attested by the secretary of state, under the great seal.

893. *Other commissions.*

SEC. 893. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

894. *Appointment of deputies, etc., how made.*

SEC. 894. The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing, filed in the office of the appointing power or the office of its clerk.

ARTICLE VI.

OATH OF OFFICE.

904. *Oath, form of.*

SEC. 904. Before any officer enters on the duties of his office, he must take and subscribe the following oath:

"I do swear [or affirm] that I will support the constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability."

905. *Oath of governor and lieutenant-governor.*

SEC. 905. The governor and lieutenant-governor must take the official oath in the presence of both houses of the legislature, in convention assembled, and an entry of the fact must be made upon the journals of each house.

906. *Oath of members of the legislature.*

SEC. 906. Members of the legislature may take the oath of office at any time during the term for which they were elected.

907. *Oath, when taken.*

SEC. 907. Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given.

908. *Oath, before whom taken.*

SEC. 908. Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

909. *Oath, where filed.*

SEC. 909. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially directed, as follows:

1. The oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state.
2. The oath of all officers elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the offices of the clerks of their respective counties.

910. Oath of deputies, etc.

SEC. 910. Deputies, clerks, and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.

ARTICLE VII.**PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.****920. Certain officers not to be interested in contracts.**

SEC. 920. Members of the legislature, state, county, city, and township officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

921. Nor purchasers or vendors at certain sales.

SEC. 921. State, county, township and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

922. Contracts in violation, voidable.

SEC. 922. Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

923. Certain officers prohibited from dealing in scrip, etc.

SEC. 923. The state treasurer and controller, the several county, city, or town officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons whatever, any state, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such state, city, town, or corporation.

924. Auditing officers, duties of.

SEC. 924. Every officer whose duty it is to audit and allow the accounts of other state, county, city or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this article.

925. Treasurer, duties of.

SEC. 925. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, or town, when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

926. When settlements must be withheld.

SEC. 926. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation, by the district attorney of the county. In case there be judgment for the defendant upon such prosecution, the respective officer may proceed to settle, audit or pay such account as if no such affidavit had been filed. [*Amendment, approved March 30, 1874; Amendments 1873-4, 14; took effect July 6, 1874.*^(a)]

(a) The original section did not have any of the words of the above amendment after the words "for such violation."

ARTICLE VIII.

SALARIES OF OFFICERS WHEN TITLE IS CONTESTED.

936. *Title contested, salary must not be paid.*

SEC. 936. When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

937. *Pendency of suit must be certified by the clerk.*

SEC. 937. As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

ARTICLE IX.

BONDS OF OFFICERS.

947. *Time for filing bond.*

SEC. 947. Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

948. *Approval, filing and recording bonds of state officers.*

SEC. 948. Unless otherwise prescribed by statute, the official bonds of state officers must be approved by the governor, and filed and recorded in the office of the secretary of state.

949. *Bond of secretary of state, where filed.*

SEC. 949. The official bond of the secretary of state must, after it is recorded, be filed in the office of the treasurer of state.

950. *Bonds of county and township officers, approval, filing and recording.*

SEC. 950. Unless otherwise prescribed by statute, the official bonds of county and township officers must be approved by the county judge, recorded in the office of the county recorder, and then filed in the county clerk's office.

951. *Record of official bond.*

SEC. 951. Official bonds must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds."

952. *Approval must be indorsed on bond.*

SEC. 952. The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

953. *Bond not to be filed before approval.*

SEC. 953. No officer with whom any official bond is required to be filed must file such bond until approved.

954. *Condition of bond.*

SEC. 954. The condition of an official bond must be that the principal will well, truly and faithfully perform all official duties then required of him by law, and also all such additional duties as may be imposed on him by any law of the State of California. Such bond must be signed by the principal and at least two sureties.

955. *Justification of sureties.*

SEC. 955. The officer whose duty it is to approve official bonds required of state, county, or township officers, must not accept or approve any such bond, unless each of the sureties severally justify before an officer authorized to administer oaths, as follows: First. On a bond given by a state officer, that such surety is a resident and freeholder or householder within this state; and on a bond given by a county or township officer, that such surety is a resident

and freeholder or householder within such county, or within an adjoining county. Second. That such surety is worth the amount for which he becomes surety, over and above all his debts and liabilities, in unincumbered property, situated within this state, exclusive of property exempt from execution and forced sale. Third. A member of the board of supervisors shall not be accepted as surety upon the official bond of any county or township officer of his county; nor shall the sheriff, clerk, tax collector, treasurer, recorder, auditor, assessor, or district attorney of the same county become sureties upon official bonds for each other. [*Amendment, approved March 30, 1874; Amendments 1873-4, 72; took effect sixtieth day after passage.*^(a)]

956. Sureties for less than the penal sum.

SEC. 956. When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions of not less than five hundred dollars thereof, making in the aggregate at least two sureties for the whole penal sum. And if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specifically liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable.

957. Custody of official bonds.

SEC. 957. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

958. Form of bonds.

SEC. 958. All official bonds must be in form joint and several, and made payable to the State of California in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

959. Construction of bonds.

SEC. 959. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

960. Obligation as to duties required by new acts.

SEC. 960. Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

961. Suit on bonds.

SEC. 961. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the State of California, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

962. Subsequent suits.

SEC. 962. No such bond is void on the first recovery of a judgment thereon;

(a) The original section did not contain the third subdivision.

but suit may be afterwards brought, from time to time, and judgment recovered thereon by the State of California, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

963. *Defects in form, approval, filing, etc., not to vitiate.*

SEC. 963. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the state or party interested; and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

964. *Insufficiency of sureties.*

SEC. 964. Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the judge, court, board, officer, or other person whose duty it is to approve the official bond of any officer, that the sureties or any one of them have, since such bond was approved, died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the judge, court, board, officer, or other person may issue a citation to such officer, requiring him, on a day therein named, not less than three nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the judge, court, board, officer, or other person must make an order vacating the office, and the same must be filled as provided by law.

965. *Form of additional bond.*

SEC. 965. The additional bond must be in such penalty as directed by the court, judge, board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits and actions as are prescribed respecting the original bonds of officers.

966. *Force of original bond.*

SEC. 966. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

967. *Liability of officers and sureties.*

SEC. 967. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

968. *Separate judgments on bonds.*

SEC. 968. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively; but he must only collect, by execution or otherwise,

the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

969. *Contribution between sureties.*

SEC. 969. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

970. *Discharge of sureties.*

SEC. 970. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond with sufficient sureties in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond such first sureties are exonerated from all further liability; but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

971. *Persons appointed to fill vacancies, bonds of.*

SEC. 971. Any person appointed to fill a vacancy, before entering upon the duties of the office must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

972. *Release of sureties.*

SEC. 972. Any surety on the official bond of a city, town, county, or state officer, may be relieved from liabilities thereon afterwards accruing by complying with the provisions of the three sections following.

973. *Statement for release.*

SEC. 973. Such surety must file with the judge, court, board, officer, or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

974. *Service.*

SEC. 974. A copy of the statement must be served on the officer named in such official bond, and due return or affidavit of service made thereon as in other cases.

975. *When office may be declared vacant for want of official bond.*

SEC. 975. In ten days after the service of such notice, the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge of all his official duties as required originally.

976. *Supplemental bond.*

SEC. 976. Whenever from any cause a surety on the official bond of any officer elected or appointed under the laws of this state withdraws from his bond or becomes insolvent, or from other cause becomes incompetent to remain as

surety thereon, such officer may file a supplemental bond, executed and approved in the same manner as the original bond, for the amount for which the surety so withdrawing or incompetent was bound by the original bond.

977. *Effect of release on bond.*

SEC. 977. The release, discharge, voluntary withdrawal, or incompetency of a surety on any official bond does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

978. *Supplemental bond after withdrawal.*

SEC. 978. Whenever a surety on any official bond gives notice of intention to withdraw therefrom, or is removed, or becomes otherwise incompetent, the principal on the bond must, within ten days after such notice or disqualification, execute and file, subject to the same conditions as the original, a supplemental bond, wherein must be recited the names of the remaining original sureties, and the name or names of the new surety or sureties and the respective amounts for which he or they become bound, who are substituted in lieu of the surety or sureties released or disqualified.

979. *When supplemental bond not required.*

SEC. 979. Whenever the original bond is given for an amount in excess of the sum required by law, if the withdrawal or removal of any surety does not reduce the bond below the amount required by law to be secured by sureties, then no supplemental or additional bond is required or necessary; and whenever any supplemental bond is so filed and approved, the officer with whom the bond is filed, or in whose office the same is recorded, must give ten days' notice—by publication in some paper published in the county, or if there is no paper in the county, then in the county nearest thereto in which a newspaper is published, and in case of the bond of a state officer, in some paper at the city of Sacramento—of the fact of the filing of the bond and the name of the party withdrawing from the former and the substitute on the new bond; and until the filing and approval of the supplemental bond the sureties on the former bond are liable for all the acts of their principal.

980. *Effect of discharge of sureties.*

SEC. 980. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order mentioned in section 975, but such legal proceedings may be had therefor in all respects as though no such order had been made.

981. *Provisions of article apply to bonds of administrator, etc.*

SEC. 981. The provisions of this article apply to the bonds of receivers, executors, administrators, and guardians.

982. *Bonds of receivers, assignees, etc.*

SEC. 982. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the State of California; and upon the order of the court where such action or proceeding is pending may be prosecuted for the benefit of any and all persons interested therein.

983. *Actions on official bonds—Effect of notice of action.*

SEC. 983. When an action is commenced in any court in this state for the benefit of the state, to enforce the penalty of or to recover money upon an official bond or obligation, or any bond or obligation executed in favor of the State of California, or of the people of this state, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond

or obligation was executed by the defendant or one or more of the defendants (designating whom), and made payable to the people of the state, or to the State of California, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk receiving such affidavit must certify to the recorder of the county in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

984. *Record of notice of action.*

SEC. 984. Upon receiving such certificate the county recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed belonging to the defendant, or to one or more of such defendants, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

985. *Bonds of deputies, clerks, etc.*

SEC. 985. Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

986. *Official bond of county clerk, where filed.*

SEC. 986. The official bond of the county clerk shall, after being recorded, be filed in the office of the county treasurer, and the safe keeping of the same is hereby made the duty of the county treasurer. [*New section, approved March 27, 1874; Amendments 1873-4, 73; took effect sixtieth day after passage.*]

ARTICLE X.

RESIGNATIONS, VACANCIES, AND THE MODE OF SUPPLYING THEM.

995. *Resignations, to whom made.*

SEC. 995. Resignations must be in writing, and made as follows:

1. By the governor and lieutenant-governor, to the legislature, if it is in session; and if not, then to the secretary of state;
2. By all officers commissioned by the governor, to the governor;
3. By senators and members of the assembly, to the presiding officers of their respective houses, who must immediately transmit the same to the governor;
4. By all county and township officers not commissioned by the governor, to the clerk of the board of supervisors of their respective counties;
5. By all other appointed officers, to the body or officer that appointed them.
6. In all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

996. *Vacancies, how they occur.*

SEC. 996. An office becomes vacant on the happening of either of the following events before the expiration of the term:

1. The death of the incumbent;
2. His insanity, found upon a commission of lunacy issued to determine the fact;
3. His resignation;
4. His removal from office;

5. His ceasing to be an inhabitant of the state, or if the office be local, of the district, county, city, or township for which he was chosen or appointed, or within which the duties of his office are required to be discharged;

6. His absence from the state without permission of the legislature beyond the period allowed by law;

7. His ceasing to discharge the duties of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the state by permission of the legislature;

8. His conviction of a felony, or of any offense involving a violation of his official duties;

9. His refusal or neglect to file his official oath or bond within the time prescribed;

10. The decision of a competent tribunal declaring void his election or appointment.

997. *Notice of removal, by and to whom given.*

SEC. 997. Whenever an officer is removed, declared insane, or convicted of a felony or offense involving a violation of his official duty, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had, must give notice thereof to the officer empowered to fill the vacancy.

998. *Vacancies in legislature, how filled.*

SEC. 998. Whenever a vacancy occurs in either house of the legislature the governor must at once issue a writ of election to fill such vacancy.

999. *Vacancies, how filled when not otherwise provided for.*

SEC. 999. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by granting a commission, to expire at the end of the next session of the legislature or at the next election by the people.

1000. *Vacancies occurring during session of legislature.*

SEC. 1000. Vacancies occurring in office during the recess of the legislature, the appointment to which is vested in the governor and senate, or in the legislature, must be filled by appointment made by the governor; but the person so appointed can only hold the office until the adjournment of the next session of the legislature.

1001. *Vacancies in certain state offices, how filled.*

SEC. 1001. A vacancy in the office of either the secretary of state, controller, treasurer, attorney-general, surveyor-general, or clerk of the supreme court, must be filled by a person appointed by the governor, who shall hold his office for the balance of the unexpired term. [*Amendment, approved April 1, 1876; Amendments 1875-6, 23; took effect sixtieth day after passage.*]^(a)

1002. *Harbor commissioner or superintendent of public instruction.*

SEC. 1002. A vacancy in the office of either the superintendent of public instruction or state harbor commissioner must be filled by a person appointed by the governor.

1003. *Directors of insane asylum.*

SEC. 1003. Any person appointed to fill a vacancy in the board of directors of the insane asylum holds only for the unexpired term of his predecessor.

(a) Original section:

SEC. 1001. A vacancy in the office of either the secretary of state, controller, treasurer, attorney-general, surveyor-general, state printer, clerk of the supreme court, or state harbor commissioner, elected by the state at large, must be filled by a person appointed by

the governor. At the next general election subsequent to the occurrence of the vacancy a successor must be elected, who must qualify and enter upon the duties of his office on the first Monday in December next after his election, and who holds his office for the balance of the unexpired term.

1004. *Power and duty of officers filling unexpired terms.*

SEC. 1004. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations of the officer whose vacancy he fills.

ARTICLE XI.**PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY OFFICERS TO THEIR SUCCESSORS.****1014. *Possession of books and papers.***

SEC. 1014. Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office.

1015. *Proceedings to compel delivery of.*

SEC. 1015. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply by petition to any court of record sitting in the county where the person so refusing or neglecting resides, or to any judge of the district or county court residing therein, and the court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegations and proof of the parties, and to order any such books or papers to be delivered to the petitioners.

1016. *Attachment and warrant to enforce.*

SEC. 1016. The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the petitioner, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner.

ARTICLE XII.**MISCELLANEOUS PROVISIONS.****1026. *Seals of executive officers.***

SEC. 1026. Except where otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this code takes effect, and each of such officers must at once file a description and impression of such seal in the office of the secretary of state.

1027. *Great seal.*

SEC. 1027. The great seal of the state is the one in use at the time of the adoption of this code.

1028. *Executive and judicial officers may administer oaths.*

SEC. 1028. Every executive and judicial officer may administer and certify oaths.

1029. *Salaries of officers.*

SEC. 1029. Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury, monthly, on the last day of each month.

1030. *Office hours.*

SEC. 1030. Unless otherwise provided by law, every officer must keep his office open for the transaction of business from ten o'clock A. M. until four o'clock P. M. each day, except upon holidays.

1031. *Signature of officers acting ex officio.*

SEC. 1031. When an officer discharges ex officio the duties of another office

than that to which he is elected or appointed, his official signature and attestations must be in the name of the office the duties of which he discharges.

1032. *Records open to public inspection, except in divorce.*

SEC. 1032. The public records and other matters in the office of any officer, are at all times, during office hours, open to the inspection of any citizen of this state. In all actions for divorce, the pleadings, and the testimony taken and filed in said actions, shall not be by the clerk with whom the same is filed, or the referee before whom the testimony is taken, made public, nor shall the same be allowed to be inspected by any person except the parties that may be interested, or the attorneys to the action, or by an order of the court in which the action is pending; a copy of said order must be filed with the clerk. In cases of attachment, the clerk of the court with whom the complaint is filed shall not make public the fact of the filing of such complaint, or of the issuing of such attachment, until after the filing of return of service of attachment. [*Amendment, approved March 30, 1874; Amendments 1873-4, 14; took effect July 6, 1874.*^(a)]

TITLE II.

Of Elections.

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CHAPTER I.

GENERAL PROVISIONS RELATING TO ELECTIONS.

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ARTICLE I.

TIME OF HOLDING ELECTIONS.

1041. *General election, when to be held.*

SEC. 1041. There must be held throughout the state, on the first Wednesday in September, in the year eighteen hundred and seventy-three, and in every second year thereafter, and also on the Tuesday next after the first Monday of November in each bissextile or leap year, an election to be known as the general election.

(a) The original section consisted of the first sentence alone.

1042. *Judicial election, when to be held.*

SEC. 1042. There must be held throughout the state, on the third Wednesday in October, in the year eighteen hundred and seventy-three, and in every second year thereafter, an election to be known as the judicial election.

1043. *Special elections, when to be held.*

SEC. 1043. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper board or officer.

ARTICLE II.**ELECTION PROCLAMATIONS.****1053. *Election proclamations by governor.***

SEC. 1053. At least thirty days before each general or judicial election, and whenever he orders a special election, the governor must issue an election proclamation, under his hand and the great seal of the state, and transmit copies thereof to the board of supervisors of the counties in which such elections are to be held.

1054. *Governor's proclamation, what to contain.*

SEC. 1054. Such proclamation must contain:

1. A statement of the time of election, and of the offices to be filled;
2. An offer of rewards in the following form: "And I do hereby offer a reward of one hundred dollars for the arrest and conviction of any and every person violating any of the provisions of Title IV, Part I, of the Penal Code; such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of ten thousand dollars." [See post, 13,041.]

1055. *Supervisors must publish proclamation, etc.*

SEC. 1055. The board of supervisors, upon receipt of such proclamation, may in their discretion cause a copy of the same to be published in some newspaper printed in the county (if any), and to be posted at each place of election, at least ten days before the election, or may cause written or printed notices of the election to be posted at each election precinct at least ten days before the election. [*Amendment, approved March 15, 1876; Amendments 1875-6, 24; took effect from passage.*^(a)]

1056. *Election proclamations by supervisors.*

SEC. 1056. Whenever a special election is ordered by the board of supervisors, they must issue an election proclamation, containing the statement provided for in subdivision 1 of section 1054, and must publish and post it in the same manner as proclamations issued by the governor.

ARTICLE III.**MISCELLANEOUS PROVISIONS.****1066. *Plurality to elect.***

SEC. 1066. The person receiving at any election the highest number of votes for any office to be filled at such election is elected thereto.

1067. *Proceedings on tie vote other than for governor or lieutenant-governor.*

SEC. 1067. If at any election, except that for governor or lieutenant-governor, two or more persons receive an equal and the highest number of votes, there is no choice, and a special election to fill such office must be ordered by the proper board or officer.

(a) Original section:

SEC. 1055. The board of supervisors, upon receipt of such proclamation, must cause a copy of the same, together with a copy of Title IV, Part I, of the Penal

Code, to be published in some newspaper printed in the county (if any), and to be posted at each place of election, at least ten days before the election.

1068. *Same, on tie vote for governor or lieutenant-governor.*

SEC. 1068. In case any two or more persons have an equal and highest number of votes for either governor or lieutenant-governor, the legislature must, by joint vote of both houses, choose one of the persons to fill such office.

1069. *Electors privileged from arrest, when.*

SEC. 1069. Electors are privileged from arrest, except for an indictable offense, during their attendance on the election, and in going to and returning from the same.

1070. *Electors exempt from militia duty, when.*

SEC. 1070. No elector is obliged to perform militia duty on the day of election, except in time of war or public danger.

1071. *No fees for certificate of registration.*

SEC. 1071. No fees must be charged for registration or certificates thereof.

1072. *Compensation of officers of election.*

SEC. 1072. The compensation of members of boards of election and clerks must be fixed and audited by the board of supervisors, and paid out of the county treasury.

1073. *Supervisors to have blanks prepared.*

SEC. 1073. The necessary printed blanks for poll lists, tally lists, lists of voters, oath, and returns, together with envelopes in which to inclose returns, must be furnished by the board of supervisors to the officers of each election precinct at the expense of the county.

CHAPTER II.

QUALIFICATIONS AND DISABILITIES OF ELECTORS.

1083. *Qualifications of voter.*

SEC. 1083. Every male citizen of the United States, who shall have been a resident of the state six months next preceding the election, and of the precinct in which he claims his vote thirty days, and whose name is enrolled on the great register of such county, is a qualified elector thereof.

1084. *Certain citizens not entitled to vote.*

SEC. 1084. No idiot or insane person, or person convicted of any infamous crime, is entitled to the privilege of an elector.

CHAPTER III.

REGISTRATION OF ELECTORS.

1094. *Great register to be kept.*

SEC. 1094. There must be kept in the office of the county clerk of each county a great register.

1095. *Names of electors to be entered.*

SEC. 1095. In the great register the clerk must, as hereinafter provided, enter the names of the qualified electors of the county whose names are not already thereon.

1096. *Substance of entry.*

SEC. 1096. Such entry must show:

1. The name, at length;
2. The age, omitting fractions of years;
3. The country of the nativity;
4. The place of residence (giving the ward or precinct);

5. If naturalized, the time and place of naturalization; and,
 6. The date of the entry;
- Of each person. Each name must be numbered in the order of its entry.

1097. *Rules governing entry.*

SEC. 1097. No person's name must be entered by the clerk, unless:

1. Upon a certificate of registration in another county, showing that such registration has been canceled, and upon proof, by the affidavit of the party, that he is an elector of the county in which he seeks to be registered;

2. Upon the returns of the assessor of the county;

3. If a naturalized citizen, upon the production of his certificate of naturalization, or upon his own affidavit that it is lost or out of his possession, which affidavit must state the place of his nativity, and the time and place of his naturalization, together with his affidavit that he has resided in the United States for five years, and in this state for six months next preceding the time of application, and that he is an elector of the county;

4. If born in a foreign country, upon his affidavit that he became a citizen of the United States by virtue of the naturalization of his father, whilst he was residing in the United States, and under the age of twenty-one years, and that he is an elector of the county;

5. Upon the production and filing of a certified copy of the judgment of a district court directing such entry to be made;

6. In other cases, upon the affidavit of the party that he is an elector of the county;

7. In every case, the affidavit of the party must show all the facts required to be stated in the entry on the register, except the date and number of the entry. [*Amendment, approved March 30, 1874; Amendments 1873-4, 15; took effect July 6, 1874.*]^(a)

1098. *Assessor's roll of electors.*

SEC. 1098. The assessor of each county must keep a roll of electors, on which, and upon like proof as is required for entry upon the great register, he must enroll the name of any elector of the county making application to him for that purpose.

1099. *What enrollment must show.*

SEC. 1099. Such enrollment must show the same facts as are required to be shown by the entry upon the great register.

1100. *Duty of clerk or assessor relative to certain proofs produced before him.*

SEC. 1100. The clerk or assessor must, upon every certificate of naturalization presented to him as evidence of citizenship, indorse and subscribe a statement of the time of presentation and of his action thereon.

1101. *Assessor must make monthly returns of his enrollment.*

SEC. 1101. At the end of every month the assessor must return to the county clerk a certified copy of all entries made upon his roll of electors during such month, and all affidavits made for the purpose of procuring such enrollment.

1102. *Duty of clerk upon receipt of the return.*

SEC. 1102. Upon the receipt of such return, the clerk must at once enter

(a) The original section differed in the third and fourth subdivisions, which were as follows:

3. If a naturalized citizen, upon the production of his certificate of naturalization, or upon his own affidavit of its loss, together with the affidavit of a registered citizen to the effect that the applicant has resided in the United States for five years and in this state for six months next preceding the time of application, and is reputed to be a citizen of the United States, and that deponent believes him to be, and proof by the affidavit of the party that he is an elector of the county;

4. If born in a foreign country, but by his affidavit

he states he became a citizen of the United States by virtue of the naturalization of his father whilst he was residing in the United States, and under the age of twenty-one years, upon the production of a certified copy of his father's certificate of naturalization, or upon such proof of residence and reputed citizenship as is required by the preceding subdivision, and upon proof by the affidavit of the party that he is an elector of the county.

In the seventh subdivision the original section had the word "shows" instead of "must show."

upon the great register the names contained and the statements made in such return.

1103. *Affidavits must be filed in clerk's office.*

SEC. 1103. The clerk must file and preserve all affidavits returned to him by the assessor or used before him for the purpose of obtaining registration.

1104. *Persons not to be registered in different counties at same time.*

SEC. 1104. No person must cause himself to be registered or enrolled in one county when his registration in another remains uncanceled.

1105. *Cancellation of entry.*

SEC. 1105. There must be left opposite each name in the great register a blank for cancellation. Cancellation is made by writing in such blank the word "Canceled," and a statement of the reasons therefor.

1106. *When entry must be canceled.*

SEC. 1106. The clerk must cancel the entry in the following cases:

1. At the request of the party registered;
2. When he knows of the death or of the removal of the person registered;
3. When the insanity of the person registered is legally established;
4. Upon the production of a certified copy of a judgment of felony, in full force against the person registered, or upon information of such conviction, obtained as hereinafter provided;
5. Upon the production of a certified copy of a judgment directing the cancellation to be made;

6. Upon the certificate of the board of election of any precinct sent up with the election returns, stating the death or removal, within their own knowledge, of person registered;

7. When it appears, by the returns made by the board and clerks of election, that the respective party did not vote during the next preceding three years at any general or judicial election;

8. The clerk shall cancel upon the great register every name found thereon which is also found upon the register of deaths, provided for in section three thousand and seventy-nine of this code;

9. Every judge before whom proceedings were had, which result in any male person being declared incapable of taking care of himself and managing his property, and for whom a guardian of his person and estate is accordingly appointed, or which result in such person being committed to a state insane asylum, as an insane person, shall file with the county clerk a certificate of that fact, and thereupon the clerk shall cancel the name of such person upon the great register, if found thereon;

10. The county clerk shall, also, in the first week of July in each year, examine the records of the courts having jurisdiction in cases of felony, within his county, and cancel upon the great register the names of all persons appearing thereon who shall have been convicted of felony in any of such courts, and which conviction shall have been carried into effect. [*Amendment, approved March 30, 1874; Amendments 1873-4, 16; took effect July 6, 1874.*^(a)]

1107. *Clerk must give certificate of registration.*

SEC. 1107. Upon the application of the party in person or in writing, the clerk must give him or his agent a certified copy of the entries upon the great register relating to such party.

1108. *Persons refused registration may proceed by action.*

SEC. 1108. If the clerk refuses to enter the name of any qualified elector of

(a) The original section did not have any one of the fourth it did not have any of the words after the word seventh, eighth, ninth or tenth subdivisions. In the "registered."

the county upon the great register, such elector may proceed by action in the district court to compel such entry.

1109. *Any person may proceed by action to have registration canceled.*

SEC. 1109. Any person may proceed by action in the district court to compel the clerk to cancel any entry made on the great register illegally, or that ought to be canceled by reason of facts that have occurred subsequent to the time of such entry; but if the person whose name is sought to be canceled be not a party to the action, the court may order him to be made a party defendant. [*Amendment, approved March 30, 1874; Amendments 1873-4, 17; took effect July 6, 1874.*^(a)]

1110. *Parties plaintiff to such actions.*

SEC. 1110. In an action under the authority of section 1108 as many persons may join as plaintiffs as have causes of action.

1111. *Parties defendant.*

SEC. 1111. In an action under the authority of section 1109 the clerk and as many persons as there are causes of action against may be joined as defendants.

1112. *Costs, when recoverable against clerk.*

SEC. 1112. Costs cannot be recovered against the clerk in any action under the authority of this chapter unless it is alleged in the complaint, and established on the trial, that the clerk knowingly and willfully violated a plain duty.

1113. *Clerk to make copy of great register.*

SEC. 1113. Before the fifth day of August in each year in which there shall be a general or presidential election, each county clerk must make a copy of the uncanceled entries existing on the great register on the preceding first day of August. In lieu of such copy, for the city and county of San Francisco, the county clerk must, from the poll list of the general and judicial elections, held in September and October, eighteen hundred and seventy-three, and from similar poll lists of the general and judicial elections held in every second year thereafter, make out ward registers, one for each ward in said city and county, and upon each such ward register he must enter the names of the qualified electors of the ward appearing on the last general and judicial poll lists of the ward, alphabetically arranged, together with the entries respectively appearing on the great register opposite such names. He shall not enter the name of the same person on more than one ward register. He must, however, enter upon the proper ward register, the name of any person, who, being duly sworn, shall make satisfactory proof that he is an elector of such ward, and that his name is uncanceled on the great register of said city and county. He must, upon satisfactory proof, obtained in like manner, transfer any name from one ward register to another, at the same time canceling the name on the ward register from which the transfer is made, noting such transfer on each such ward register, opposite the name. For the purposes of registration and preparation of ward registers, and copies thereof, required by law, the county clerk must employ such assistants, and for such times and at such compensation as shall from time to time be authorized by the board of supervisors. All fees received for registration and transfers must be paid into the treasury of the city and county, and out of such treasury must be paid the compensation of such assistants, and all the necessary expenses of registration, preparation of registers, and of transfers, upon the proper orders of the board of supervisors. The board of supervisors of any county may, by order, provide for the preparation, printing and distribution of township registers for each township, instead of copies of the

(a) The original section did not have the last clause commencing with the words "but if the person."

great register, in the same manner as is herein above provided respecting ward registers in the city and county of San Francisco. When so ordered, the provisions of law applicable to the city and county of San Francisco, in respect to the preparation, correction, issue, distribution, posting, use, and return of ward registers, shall apply to such county, the word "township" being substituted for "ward" for that purpose, wherever it occurs; except that the number of additional copies to be printed of such registers shall not exceed fifty for each one thousand votes cast in the respective townships at the next preceding election. The board of supervisors shall fix the compensation of the county clerk for his services in preparing the township registers, which shall be paid out of the county treasury. Such order may be repealed and re-enacted as often as the board of supervisors may deem it expedient to do so. [*Amendment, approved March 30, 1874; Amendments 1873-4, 17; took effect July 6, 1874.*^(a)]

1114. Names must be arranged alphabetically and numbered.

SEC. 1114. In such copy and registers the names must be arranged alphabetically, according to surnames, and must be numbered consecutively, from the first to the last name, inclusive. [*Amendment, approved March 30, 1874; Amendments 1873-4, 19; took effect July 6, 1874.*^(b)]

1115. Great register must be printed.

SEC. 1115. Within fifteen days after making such lists, the clerk must have printed a sufficient number of copies thereof to supply each election precinct in the county with not less than ten copies thereof, and fifty additional for every one thousand votes cast in the county at the next preceding general election, except that in the city and county of San Francisco the county clerk must have printed a sufficient number of copies of each ward register to supply two hundred and fifty copies thereof for the first one thousand votes, or fraction thereof, cast in the ward at the next preceding general election, and fifty additional copies for each additional one thousand votes, or fraction thereof above five hundred; but in all the counties of this state, other than those of the first class, as classified by this code, the clerk of each of such counties, if the board of supervisors, in their discretion, so order, must, if there is a sufficient number of the register last printed on hand to provide not less than four copies for each precinct in such county, cancel the names of all persons thereon required to be canceled, and furnish the same to each precinct, together with the same number of copies of a supplement containing the uncanceled entries made upon the great register subsequent to the last publication thereof. [*Amendment, approved March 24, 1876; Amendments 1875-6, 24; took effect on passage.*^(c)]

1116. Printed copies, how distributed.

SEC. 1116. The clerk must, as soon as such copies of the great register, or ward, or township registers are printed:

1. Post one copy in some public place in the court-house.
2. Deliver, upon demand, one copy to each county and township officer in the county.
3. Transmit and cause to be delivered not less than ten copies to each board of election in the county; but in cases where ward registers are printed, ten

(a) Original section:

SEC. 1114. Before the fifth day of August, in the year eighteen hundred and seventy-three, and in every second year thereafter, each county clerk must make out a copy of the uncanceled entries existing on the Great Register on the preceding first day of August.

(b) The original section did not have the words "and registers."

(c) The original section consisted only of the first clause down to and including the words "next preceding general election."

It was previously amended by act of March 30, 1874 (Amendments 1873-4, 19) so as to read like the text with the exception of the last clause commencing with the words "but in all the counties."

copies shall be delivered to each board of election in the respective wards, and one copy of all the registers to each board of election in the county.

4. Preserve five copies in the office, for the inspection of the public.

5. Transmit to the State Library, Mercantile Library, Mechanics' Institute, and Odd Fellows' Library, of San Francisco, one copy each.

6. Deliver one copy to each elector of the county or respective ward, applying therefor, until the remainder of the edition printed is exhausted; provided, that nothing in this section, except the first, third, and fourth subdivisions thereof, shall apply to counties other than of the first class. [*Amendment, approved March 24, 1876; Amendments 1875-6, 21; took effect on passage.*^(a)

1117. *Certified copy, prima facie evidence.*

SEC. 1117. A certified copy of an uncanceled entry upon the great register, is prima facie evidence that the person named in the entry is an elector of the county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 20; took effect July 6, 1874.*^(b)

An Act to compel the county clerk of the city and county of San Francisco to keep open his office upon all election days.

Approved March 7, 1876; 1875-6, 142.

Clerk to keep office open.

SECTION 1. The county clerk of the city and county of San Francisco shall keep his office open continuously upon all election days from sunrise until six o'clock and thirty minutes of the evening of the same day, for the sole and only purpose of registering voters, and giving voters certificates of registration and transfers to the wards they live in.

SEC. 2. This act shall take effect from and after its passage.

CHAPTER IV.

ELECTION PRECINCTS.

1127. *Supervisors to establish election precincts.*

SEC. 1127. The board of supervisors of each county must establish a convenient number of election precincts therein.

1128. *Boundaries to be defined.*

SEC. 1128. In the order establishing precincts the boundaries thereof must be defined.

1129. *Board may alter, etc., precincts.*

SEC. 1129. The board may from time to time change the boundaries of, create new, or consolidate established precincts.

1130. *Limitations on powers given herein.*

SEC. 1130. The following limitations are imposed upon the powers given the supervisors in this chapter:

1. No precinct must be so established as to embrace more than one township, nor parts of two or more townships, nor in such manner that its exterior limits cross the exterior boundaries of any township, incorporated town, or city, or any ward, district, or other territorial subdivision for which local officers are to be elected, except a school or road district;

(a) The original section did not have the words "of the Great Register, or ward, or township registers." The third, fifth and sixth subdivisions were as follows:

3. Transmit and cause to be delivered not less than ten copies to each election board in the county;

5. Transmit to the State library and Mercantile library of San Francisco one copy each;

6. Deliver one copy to each elector of the county

applying therefor until the remainder of the edition printed is exhausted.

It was previously amended by act of March 30, 1874 (Amendments 1873-4, 20) so as to read like the text with the exception that it did not have the proviso in the sixth subdivision.

(b) The original section had the word "primary" instead of "prima facie."

2. No precinct must be established, nor must the boundaries of one already established be altered, within thirty days next preceding a general or judicial election.

1131. *Board to designate place for holding election, and offices to be filled.*

SEC. 1131. The board must, at least fifteen days prior to an election, issue its order appointing boards of election, designating the house or place within the precinct where the election must be held, and the offices to be filled, naming and numbering, in numerical order, commencing with number one, the offices to be filled, unexpired terms being lastly designated. [*Amendment, approved March 30, 1874; Amendments 1873-4, 21; took effect July 6, 1874.*^(a)]

1132. *When polling places not designated by supervisors.*

SEC. 1132. If the board fail to designate the house or place for holding the election, or if it cannot be held at the house or place designated, the justices of the peace residing in the precinct, must meet two days before the election, and by an order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place. In the city and county of San Francisco, any three of the justices of the peace may discharge the duties imposed by this section, at least eighteen hours prior to the opening of the polls. [*Amendment, approved March 30, 1874; Amendments 1873-4, 21; took effect July 6, 1874.*^(b)]

CHAPTER V.

BOARDS OF ELECTION.

1142. *Boards of election, how appointed.*

SEC. 1142. When an election is ordered, the board of supervisors must appoint, for each precinct, from the electors thereof, one inspector and two judges, who constitute a board of election for such precinct; and in the city and county of San Francisco the board of supervisors must also, prior to the election day, appoint for each precinct, from the electors thereof, an additional inspector and two additional judges, who, with the original inspector and judges, shall canvass the votes for such precinct, and who must be present at the closing of the polls, otherwise the board of election must appoint the additional inspector and judges, or supply the place of an absent member thereof. The original and additional inspectors and judges shall thenceforth constitute the board of election, the members relieving each other in the duties of canvassing the ballots, which may be conducted by at least half of the whole number; but the final certificates shall be signed by a majority of the whole. [*Amendment, approved March 30, 1874; Amendments 1873-4, 21; took effect July 6, 1874.*^(c)]

1143. *Judges not to be of same political party.*

SEC. 1143. The judges appointed must not be members of the same political party.

1144. *Failure to appoint board of election.*

SEC. 1144. If the board of supervisors fail to appoint the board of election, or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct present at that hour may appoint

(a) Original section:

SEC. 1131. The board must, in its order appointing boards of election, designate the house or place within the precinct where the election must be held.

(b) The original section consisted of the first sen-

tence alone; but used the words "residing therein" instead of "residing in the precinct."

(c) The original sentence consisted only of the first clause down to and including the words "a board of election for such precinct."

the board, or supply the place of an absent member thereof. [*Amendment, approved March 30, 1874; Amendments 1873-4, 22; took effect July 6, 1874.*^(a)]

1145. Inspectors of election, their powers.

SEC. 1145. The inspector is chairman of the election board, and may:

1. Administer all oaths required in the progress of an election;
2. Appoint judges and clerks, if, during the progress of the election, any judge or clerk ceases to act.

1146. Judges and clerks may administer oaths.

SEC. 1146. Any member of the board, or either clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

1147. Clerks.

SEC. 1147. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of election.

1148. Board and clerks to be sworn.

SEC. 1148. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath.

1149. Board to post copies of great register.

SEC. 1149. Before opening the polls the board must post, in some separate convenient places, easy of access, not less than four printed copies of the great register of the county, as last printed, except in the city and county of San Francisco, wherein not less than four printed copies of the register of the ward shall be so posted. [*Amendment, approved March 30, 1874; Amendments 1873-4, 22; took effect July 6, 1874.*^(b)]

1150. Copies not to be torn nor defaced.

SEC. 1150. The copies so posted must be maintained during the whole time of voting, and must not in any manner be torn or defaced.

[In Napa county copies of the great register are dispensed with except at general or judicial elections provided for by sections 1041 and 1042 of this code, by act of March 20, 1874; 1873-4, 515. In Sacramento county a new great register was ordered to be provided by act of March 30, 1874; 1873-4, 795.]

CHAPTER VI.

OPENING AND CLOSING THE POLLS.

1160. Time of opening and closing polls.

SEC. 1160. The polls must be opened at one hour after sunrise on the morning of the election, and must be kept open until sunset, when the same must be closed, except in the city and county of San Francisco, wherein the polls must be opened at sunrise and be kept open continuously until six o'clock and thirty minutes of the evening of the same day, when the same shall be closed. [*Amendment, approved March 8, 1876; Amendments 1875-6, 25; took effect from passage.*^(c)]

(a) Original section:

SEC. 1144. If the board fails to appoint the election board, or the members appointed do not attend at eight o'clock A. M. on the morning of the election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof.

(b) Original section:

SEC. 1149. Before opening the polls, the board must post, in some convenient place easy of access, not less

than four printed copies of the great register of the county, as last printed.

(c) Original section:

SEC. 1160. The polls must be opened at eight o'clock on the morning of election, and except as provided in the next section, must be kept open until sunset.

It was previously amended by act of March 30, 1874 (Amendments 1873-4, 22) so as to read like the amendment in the text down to the word "except."

[Sec. 1161^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 23; took effect July 6, 1874.]

1162. Ballot-box to be exhibited.

SEC. 1162. Before receiving any ballots the board must, in the presence of any persons assembled at the polling place, open and exhibit and close the ballot-box; and thereafter it must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

1163. Proclamation at opening the polls.

SEC. 1163. Before the board receive any ballots they must cause it to be proclaimed aloud at the place of election that the polls are open.

1164. Proclamation at closing the polls.

SEC. 1164. When the polls are closed that fact must be proclaimed aloud at the place of election; and after such proclamation no ballots must be received.

CHAPTER VII.

POLL LISTS.

1174. Form of poll lists and tally lists.

SEC. 1174. The following is the form of poll lists and tally lists to be kept by boards and clerks of election:

POLL LISTS

Of the election held in the precinct of ———, in the county of ———, on the ——— day of ———, in the year A. D. one thousand eight hundred and ———. A. B., C. D., and E. F., judges, and G. H. and J. K., clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

NUMBER AND NAME OF ELECTORS VOTING.

No.	Name.	No.	Name.
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the number of electors voting at this election amounts to ———.

Attest:

G. H.,

J. K.,

Clerks.

A. B.,

C. D.,

E. F.,

Board of Election.

TALLY LISTS.

Names of persons voted for, and for what office, containing the number of votes given for each candidate:

Governor.	Representative in Congress.	Members of the Legislature.	
		Senate.	Assembly.

We hereby certify that A. B. had ——— votes for governor, and C. D. had

(a) Original section:

SEC. 1161. The board may close the polls for one hour at any time during the day before three o'clock P. M.

— votes for governor; that E. F. had — votes for representative in congress, etc.

G. H.,

J. K.,

Clerks.

A. B.,

C. D.,

E. F.,

Board of Election.

[*Amendment, approved March 30, 1874; Amendments 1873-4, 23; took effect July 6, 1874.*^(a)]

1175. *Want of form not to vitiate.*

SEC. 1175. No list, tally, paper, or certificate returned from any election must be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this title, if it can be satisfactorily understood.

CHAPTER VIII.

ELECTION TICKETS AND BALLOTS.

1185. *Ticket defined.*

SEC. 1185. A ticket is a paper upon which is written or printed the names of the persons for whom the elector intends to vote, with a designation of the office to which each person so named is intended by him to be chosen.

1186. *Ballot defined.*

SEC. 1186. A ballot is a ticket folded in such a manner that nothing written or printed thereon can be seen.

1187. *Tickets must be uniform.*

SEC. 1187. Every ticket must be of paper uniform in size, color, weight, texture and appearance.

1188. *Secretary of state to keep paper for tickets.*

SEC. 1188. The secretary of state must provide and keep constantly on hand a sufficient quantity of paper, uniform in color, weight, texture and appearance, without marks of any kind thereon, to supply the demand for paper for tickets.

1189. *Must supply such paper to any person on application.*

SEC. 1189. He must, upon payment of the cost thereof, and ten per cent. profit, furnish such paper to every person who may apply therefor and who makes and files with him an affidavit that such paper is to be used in providing tickets to be used as ballots at any election next to ensue.

1190. *Disposition of money collected from sale of paper.*

SEC. 1190. The sum collected by him for paper so sold must be paid into the state treasury; and ten per cent. of such sum must be credited to a fund to be kept in the treasury, and known as the "Election Reward Fund."

1191. *Form of ballot.*

SEC. 1191. No ticket must be used at any election, or circulated on the day of election, unless:

1. It is written or printed on paper furnished by the secretary of state, or upon paper in every respect precisely like such paper;

2. It is five inches in width, or within one fourth of an inch of such width. If not more than fifty offices are designated to be filled, it is twelve inches in length, or within one half of an inch of such length. If more than fifty offices, and not more than eighty offices, are designated to be filled, it is eighteen inches in length, or within one half of an inch of such length. If more than eighty offices are designated to be filled, it is twenty-four inches in length, or within one half of an inch of such length;

(a) The original section did not have the words "tally lists."

3. If printed, the names of the persons voted for, and the offices designated, are printed in black ink, and in long primer capitals—the names of the offices in small capitals, and of the persons in large capitals—and both without spaces, except between the different words or initials in each line, and between the numbers and initials;

4. If printed, the same margin is left above the printed matter as below it;

5. If printed, the lines are straight, and the matter double leaded with six to pica leads. The word "For" comprises the top line, the margins both sides of it being equal in size. The line after the top one commences with the figure 1, then follows immediately on the same line the name of the first office designated by the board of supervisors in its order, issued under section 1131, and lastly, on the same line, the name of the person voted for. Each subsequent line commences with the figure next in numerical order, and such number is in like manner immediately followed by the name of the office designated, and the person voted for; so that the offices shall appear upon the ticket in the order designated by the board of supervisors, and be numbered in numerical order, commencing with the number one. The numbers are in a straight line from top to bottom, and are within one quarter of an inch of the left-hand edge of the ticket; so that the blank space for substituted names shall be on the right-hand side of the ticket. The ticket shall be substantially in the following form:

For

1. STATE SENATOR, FRANK COWPER.
2. STATE SENATOR, PHILIP ROSS.
3. MEMBER OF ASSEMBLY, A. S. WARDEN.
4. MEMBER OF ASSEMBLY, WASHINGTON SWIFT.
5. MEMBER OF ASSEMBLY, CALEB T. HOLLIDAY.

[Amendment, approved March 30, 1874; Amendments 1873-4, 24; took effect July 6, 1874.^(a)

1192. *Ballots not to be given to any person within certain limits.*

SEC. 1192. No ticket or ballot must, on the day of election, be given or delivered to or received by any person, except the inspector, or a judge acting as inspector, within one hundred feet of the polling place.

1193. *Tickets and ballots not to be folded or unfolded within certain limits.*

SEC. 1193. No person must, on the day of election, fold any ticket or unfold any ballot which he intends to use in voting, within one hundred feet of the polling place.

1194. *Contents of tickets or ballots not to be exhibited within certain limits.*

SEC. 1194. No person must, on the day of election, within one hundred feet of the polling place, exhibit to another, in any manner by which the contents thereof may become known, any ticket or ballot which he intends to use in voting.

1195. *Persons not to be asked to disclose contents of ticket or ballot.*

SEC. 1195. No person must, on the day of election, within one hundred feet of the polling place, request another person to exhibit or disclose the contents of any ticket or ballot which such other person intends to use in voting.

(a) Original section:

SEC. 1191. No ticket must be used at any election, or circulated on the day of election, unless: 1. It is written or printed on paper furnished by the secretary of state, or upon paper in every respect precisely like such paper; 2. It is four inches in width and twelve inches in length, or within one eighth of an inch of such size; 3. If printed, the names of the persons voted for and the office designated are printed in black ink and in long primer capitals—the name of the office in small capitals, and of the person in large capitals—and both

without spaces, except between the different words or initials in each line; 4. If printed, the same margin is left above the printed matter as below it and the side margins are equal in size; 5. If printed, the lines are straight, and the matter single leaded; 6. If written, the matter is so written, that no sign thereof appears when the paper is folded; and 7. It is free from every mark, character, or device or thing that would enable any person to distinguish it by the back, or, when folded, from any other legal ticket or ballot.

1196. *Ballots to have no marks on outside.*

SEC. 1196. No ballot must be used at any election, or circulated on the day of any election, having any mark or thing on the back or outside thereof whereby it might be distinguished from any other ballot legally used on the same day.

1197. *Ballot to have no marks by which it can be told who voted it.*

SEC. 1197. No ballot or ticket must be used or circulated on the day of any election, having any mark or thing thereon by or from which it can be ascertained what persons, or what class of persons, used or voted it, or at what time in the day such ballot was voted or used. [*Amendment, approved March 26, 1874; Amendments 1873-4, 73; took effect July 6, 1874.*^(a)

1198. *Tickets, how to be folded.*

SEC. 1198. Every ticket, when used as a ballot, must be folded crosswise from the centre, and as follows: If twelve inches long, four times; if eighteen inches long, five times; and if twenty-four inches long, five times, and must be pressed flat. [*Amendment, approved March 30, 1874; Amendments 1873-4, 26; took effect July 6, 1874.*^(b)

1199. *Tickets not to be folded to indicate contents.*

SEC. 1199. No ticket must be folded in a manner to indicate its contents when used as a ballot.

1200. *Tickets folded together to be rejected.*

SEC. 1200. If in the ballot-box two tickets are found folded together in the form of a ballot, they must both be rejected.

1201. *Ballots not to be rejected for obscurity in name of person or office.*

SEC. 1201. No ballot or part thereof must be rejected by reason of any obscurity therein in relation to the name of the person voted for or the designation of the office, if the board, from an inspection of the ballot, can determine the person voted for and the office intended.

1202. *When more persons designated than to be chosen.*

SEC. 1202. If the names of more persons are designated on any ballot found in the ballot-box for the same office than are to be chosen for such office, then, except in the cases provided for in the next section, all the names designated for such offices must be rejected, and the fact of such rejection, and the reasons therefor, must at the time of such rejection be noted on the ballot and signed by a majority of the election board.

1203. *Written and printed names for the same office, which to be rejected.*

SEC. 1203. When upon a ballot found in any ballot-box a printed name and a name written with ink or with pencil appears, and there are not so many persons to be chosen for the office, the printed name must be rejected and the written one counted, and the fact must at the time be noted on the back of the ballot, and such note must be signed by a majority of the election board.

1204. *Printed tickets not to be erased but by lead-pencil or ink.*

SEC. 1204. When upon a ballot found in any ballot-box a name has been erased and another substituted therefor, in any other manner than by the use of a lead-pencil or common writing ink, the substituted name must be rejected, and the name erased, if it can be ascertained from an inspection of the ballot, must be counted, and the fact thereof must be noted upon the ballot, and such note must be signed by a majority of the election board.

(a) The original section did not have the words "used or voted it."

(b) Original section:

SEC. 1198. Every ticket, when used as a ballot, must

be folded crosswise four times from the centre, so as to make the ballot three fourths of one inch in size, and must be pressed flat.

1205. *Two votes on same ballot for same person to be counted as one.*

SEC. 1205. If a ballot is found in any ballot-box containing the name of the person and the office for which he is designated, or either, two or more times, it must not for that reason be rejected; it must be counted as one ballot.

1206. *Marked ballots to be rejected.*

SEC. 1206. When a ballot found in any ballot-box bears upon the outside thereof any impression, device, color or thing, or is folded in a manner designed to distinguish such ballot from other legal ballots deposited therein, it must, with all its contents, be rejected.

1207. *Same.*

SEC. 1207. When a ballot found in any ballot-box bears upon it any impression, device, color or thing, or is folded in a manner intended to designate or impart knowledge of the person who voted such ballot, it must, with all its contents, be rejected.

1208. *Ballots not conforming to requirements of law.*

SEC. 1208. When a ballot found in any ballot-box does not conform to the requirements of section 1191, it must, with all its contents, be rejected.

1209. *Rejected ballots to be indorsed.*

SEC. 1209. Whenever the board of election rejects a ballot, it must at the time of such rejection cause to be made thereon and signed by a majority of the board an indorsement of such rejection and of the causes thereof.

1210. *Rejected ballots to be preserved.*

SEC. 1210. All rejected ballots must be preserved and returned in the same manner as other ballots.

1211. *Ballots not rejected but objected to must be indorsed.*

SEC. 1211. Whenever a question arises in the board as to the legality of a ballot, or any part thereof, and the board decide in favor of the legality, such action, together with a concise statement of the facts that gave rise to the objection, must be indorsed upon the ballot, and signed by a majority of the board.

1212. *Ballots not in compliance with law not to be received.*

SEC. 1212. The board must refuse to receive or to allow to be deposited in the ballot-box any ballot offered if it is apparent that it is not in compliance with the provisions of this chapter.

CHAPTER IX.

VOTING AND CHALLENGES.

1224. *Voting, when to commence and continue.*

SEC. 1224. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open.

1225. *Manner of voting.*

SEC. 1225. The person offering to vote must hand his ballot to the inspector, or to one of the judges acting as inspector, and announce his name and the number affixed to it on the printed copy of the register, if his name is thereon; provided, that in incorporated towns and cities the said person voting shall also give the name of the street, avenue, or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same. [*Amendment, approved April 3, 1876; Amendments 1875-6, 26; took effect from passage.*]^(a)

(a) Original section:

SEC. 1225. The person offering to vote must hand his ballot to the inspector, or to one of the judges acting

as inspector, and announce his name and the number affixed to it on the printed copy of the register, if his name is thereon.

1226. *Announcement of voter's name.*

SEC. 1226. The inspector, or judge acting as such, must receive the ballot, and before depositing it in the ballot-box, must, in an audible tone of voice, announce the name and register number (if there be one), provided, that in incorporated towns and cities the said inspector, or judge acting as such, shall also announce the residence of the person voting, and the same shall be recorded on the poll list by the poll clerk. [*Amendment, approved April 3, 1876; Amendments 1875-6, 26; took effect from passage.*^(a)]

1227. *Putting ballot in box.*

SEC. 1227. If the name be found on the copy of the great register, or ward register, or if the party produce and file with the board an unanceled certificate of registration on the great register of the county, and the vote is not rejected upon a challenge taken, the inspector, or judge acting as such, must, in the presence of the board of election, place the ballot, without being opened or examined, in the ballot-box. [*Amendment, approved March 30, 1874; Amendments 1873-4, 27; took effect July 6, 1874.*^(b)]

1228. *Record that person has voted, how kept.*

SEC. 1228. When the ballot has been placed in the box, one of the judges must write the word "voted" opposite the number of the person on the printed copy of the register; or, if the person voted on a certificate of registration, then upon the face thereof.

1229. *List of voters.*

SEC. 1229. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order of voting.

1230. *Grounds of challenge.*

SEC. 1230. A person offering to vote may be orally challenged by any elector of the county, upon either or all of the following grounds:

1. That he is not the person whose name appears on the register;
2. That he has not resided within the state for six months next preceding the election;
3. That he has not resided within the precinct for thirty days next preceding the election;
4. That he has before voted that day;
5. That he has been convicted of a felony and has not been pardoned.

1231. *Proceedings on challenge for want of identity.*

SEC. 1231. If the challenge is on the ground that he is not the person whose name appears on the great register, the inspector must tender him the following oath:

"You do swear (or affirm) that you are the person whose name is entered on the great register."

1232. *Proceedings on challenge for non-residence.*

SEC. 1232. If the challenge is on the ground that he has not resided in the state for six months next preceding the election, the person challenged must be sworn to answer questions; and after he is sworn the following questions must be propounded to him by the inspector:

1. Have you resided in this state for six months immediately preceding this election?

(a) Original section:

SEC. 1226. The inspector, or judge acting as such, must receive the ballot, and before depositing it in the ballot-box must, in an audible tone of voice, announce

the name and register number (if there be one) of the person voting.

(b) The original section did not have the words "or ward register."

2. Have you been absent from this state within the six months immediately preceding this election? If yes, then:

3. When you left, did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?

4. Did you while absent regard this state as your home?

5. Did you while absent vote in any other state?

And such other questions as may be necessary to a determination of the challenge.

1233. *Same, on challenge for non-residence in precinct.*

SEC. 1233. If the challenge is on the ground that he has not resided in the precinct for thirty days next preceding the election, the person challenged must be sworn to answer questions; and after he is sworn the following questions must be propounded to him by the inspector:

1. When did you last come into this election precinct?

2. When you came into this precinct did you come for a temporary purpose merely, or for the purpose of making it your home?

3. Did you come into this precinct for the purpose of voting here?

And such other questions as may be necessary to a determination of the challenge.

1234. *Same, on challenge for having before voted.*

SEC. 1234. If the challenge is on the ground that the person challenged has before voted that day, the inspector must tender to the person challenged this oath:

“You do swear (or affirm) that you have not before voted this day.”

1235. *Same, on ground of conviction of a felony.*

SEC. 1235. If the challenge is on the ground that the person challenged has been convicted of a felony and has not been pardoned, he must not be questioned; but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses, and the non-production of a pardon.

1236. *Challenges, how determined.*

SEC. 1236. Challenges upon the grounds either:

1. That the person challenged is not the person whose name appears on the great register;

2. That the party has before voted on that day;

—Are determined in favor of the party challenged by his taking the oath tendered.

1237. *Trial of challenge.*

SEC. 1237. Challenges for causes other than those specified in the preceding section must be tried and determined by the board of election at the time of the challenge.

1238. *If person refuses to be sworn, vote to be rejected.*

SEC. 1238. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote.

1239. *Rules for determining question of residence.*

SEC. 1239. The board of election, in determining the place of residence of any person, must be governed by the following rules, as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning;

2. A person must not be held to have gained or lost residence by reason of his presence or absence from a place while employed in the service of the United States, or of this state, nor while engaged in navigation, nor while a student at any institution of learning, nor while kept in an almshouse, asylum, or prison;

3. A person must not be held, by reason of having moved from one precinct to another, in the same county, within thirty days prior to the election, to have lost his residence in the precinct so moved from, provided he was an elector therein on the thirtieth day prior to such election;

4. A person must not be considered to have lost his residence who leaves his home to go into another state, or precinct in this state, for temporary purposes merely, with the intention of returning;

5. A person must not be considered to have gained a residence in any precinct into which he comes for temporary purposes merely, without the intention of making such precinct his home;

6. If a person remove to another state with the intention of making it his residence, he loses his residence in this state;

7. If a person remove to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period;

8. The place where a man's family resides must be held to be his residence; but if it be a place for temporary establishment for his family, or for transient objects, it is otherwise;

9. If a man have a family fixed in one place, and he does business in another, the former must be considered his place of residence; but any man having a family, and who has taken up his abode with the intention of remaining, and whose family does not so reside with him, must be regarded as a resident where he has so taken up his abode;

10. The mere intention to acquire a new residence, without the fact of removal, avails nothing; neither does the fact of removal, without the intention. [*Amendment, approved March 30, 1874; Amendments 1873-4, 26; took effect July 6, 1874.*^(a)]

1240. *Term of residence, how computed.*

SEC. 1240. The term of residence must be computed by including the day on which the person's residence commenced, and by excluding the day of the election.

1241. *Rules must be read, if requested.*

SEC. 1241. Before administering an oath to a person touching his place of residence, the inspector must, if requested by any person, read to the person challenged the rules prescribed by sections 1238 and 1239.

1242. *Proceedings upon determination of challenge.*

SEC. 1242. If the challenge is determined against the person offering to vote, the ballot offered must, without examination, be returned to him; if determined in his favor, the ballot must be deposited in the ballot-box.

1243. *List of challenges to be kept.*

SEC. 1243. The board must cause one of the clerks to keep a list, showing:

1. The names of all persons challenged;
2. The grounds of such challenges;
3. The determination of the board upon the challenge.

(a) The original section had but nine subdivisions, omitting the one numbered 3. It used the words "election board" instead of "board of election."

CHAPTER X.

CANVASSING AND RETURNING THE VOTE.

1252. *Canvass to be public, and without adjournment.*

SEC. 1252. As soon as the polls are finally closed the judges must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof is declared.

1253. *Canvass, how commenced.*

SEC. 1253. The canvass must be commenced by taking out of the box the ballots unopened (except so far as to ascertain whether each ballot is single), and counting the same to ascertain whether the number of ballots corresponds with the number of names on the list of voters kept by the clerks. In the city and county of San Francisco, at the closing of the polls, the inspector must administer to the additional members of the board of canvassers, the oath prescribed in section 1148, and likewise to two clerks appointed by such additional members. He must then proceed to take out of the box the ballots, unopened, one at a time, numbering them on the backs in numerical order, commencing with number one, and writing with ink the initials of his own name upon the back of each ballot as taken out. He shall pass each ballot, as soon as thus indorsed, to the additional inspector, who must, in like manner, write thereon the initials of his own name, so that each ballot can be subsequently identified by either or both such inspectors. [*Amendment, approved March 30, 1874; Amendments 1873-4, 28; took effect July 6, 1874.*^(a)]

1254. *Proceedings where ballots folded together.*

SEC. 1254. If two or more separate ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; then, if upon a comparison of the count with the number of names of electors on the lists which have been kept by the clerks, it appears that the two ballots thus folded together were cast by one elector, they must be rejected. [*Amendment, approved March 30, 1874; Amendments 1873-4, 29; took effect July 6, 1874.*^(b)]

1255. *Proceedings where too many ballots.*

SEC. 1255. The ballots must be immediately replaced in the box, and if the ballots in the box exceed in number the names on the lists, one of the judges must publicly, and without looking in the box, draw out therefrom singly, and destroy, unopened, a number of ballots equal to such excess; and the board of election must make a record, upon the poll list, of the number of ballots so drawn and destroyed. In the city and county of San Francisco the numbers appearing on the backs of the ballots so drawn, must likewise be recorded. [*Amendment, approved March 30, 1874; Amendments 1873-4, 29; took effect July 6, 1874.*^(c)]

1256. *Proceedings when names and ballots agree.*

SEC. 1256. The number of ballots agreeing or being thus made to agree with the number of names on the lists, the lists must be signed by the members of the board and attested by the clerks, and the number of names thereon must be set down in words and figures at the foot of each list, and over the signatures

(a) The original section consisted of the first sentence alone.

(b) The original section had the word "destroyed" instead of "rejected."

(c) Original section:

SEC. 1255. If the ballots in the box are still found to

exceed in number the names on the lists they must be replaced in the box, and one of the judges must publicly and without looking in the box draw out therefrom singly and destroy unopened a number of ballots equal to such excess.

of the judges and the attestation of the clerks, substantially in the form prescribed in section 1174.

1257. *Counting the votes.*

SEC. 1257. After the lists are thus signed, the board must proceed to count and ascertain the number of votes cast for each person voted for. The ballots must be taken out and opened by one of the members of the board, and the ticket must be distinctly read.

1258. *Tallies.*

SEC. 1258. Each clerk must write down each office to be filled and the name of each person voted for to fill such office, and keep the number of votes by tallies as they are read aloud.

1259. *Tickets to be strung and inclosed in sealed envelopes.*

SEC. 1259. The tickets as soon as read, or rejected for illegality, must be strung upon a string by one of the judges, and must not thereafter be examined by any person, but must, as soon as all are counted, be carefully sealed in a strong envelope, each member of the board writing his name across the seal.

1260. *Return list.*

SEC. 1260. As soon as all the votes are counted and the tickets sealed up, lists must be attached to the tally lists containing the names of persons voted for and for what office, and the number of votes given for each candidate, the number being written at full length, and such lists must be signed by the members of the board and attested by the clerks, substantially in the form in section 1174 given.

1261. *Certain papers to be sealed up.*

SEC. 1261. The board must, before it adjourns, inclose in a cover and seal up and direct to the county clerk, the copy of the register upon which one of the judges marked the word "voted" as the ballots were received, all certificates of registration received by it, one of the lists of the persons challenged, one copy of the list of voters, and one of the tally lists and list attached thereto. [*Amendment, approved March 30, 1874; Amendments 1873-4, 29; took effect July 6, 1874.*^(a)]

1262. *Inspector to keep certain papers.*

SEC. 1262. The inspector must retain, open to the inspection of all electors, for at least six months, the other list of voters, tally list, and list attached thereto. [*Amendment, approved March 30, 1874; Amendments 1873-4, 30; took effect July 6, 1874.*^(b)]

1263. *Custody of returns and ballots.*

SEC. 1263. The sealed packages containing the register, lists, papers, and ballots, must before the board adjourns be delivered to one of its number, to be determined by lot, unless otherwise agreed upon.

1264. *Delivery to county clerk—Packages, how sealed up in San Francisco.*

SEC. 1264. The member to whom such packages are delivered, must without delay deliver such packages, without their having been opened, to the county clerk, nearest postmaster or sworn express agent, who shall indorse on such packages the name of the party delivering them, and date of such delivery. If delivered to a postmaster or express agent, such postmaster or express agent shall forward the packages by the first mail or express to the county seat. In the city and county of San Francisco, such packages must be delivered to the county clerk within eighteen hours from the time of adjournment of the board,

(a) Original section:

SEC. 1261. The board must before it adjourns inclose in a cover and seal up and direct to the county clerk the copy of the great register upon which one of the judges marked the word "voted" as the ballots were received, all certificates of registration received by it,

the lists of persons challenged, one copy of the list of voters, and one copy of the tally lists and list attached thereto.

(b) The original section omitted the word "electors" and had the words "copy of the" before the words "list of voters."

which time of adjournment must be indorsed upon such package, and upon each poll list, in ink, and signed by a majority of the members of such board. In the city and county of San Francisco the packages must be put up and sealed in the following manner, by an inspector, and at least three others of the board, and be signed with their respective signatures, across the same, written: One package to contain the ballots only; one package to contain one tally list and list attached, only; one package to contain the ward register and certificates of registration issued by the county clerk after making up the ward register, and received at the polls. [*Amendment, approved March 30, 1874; Amendments 1873-4, 30; took effect July 6, 1874.*^(a)]

1265. *Clerk to keep ballots unopened.*

SEC. 1265. Upon the receipt of the packages the clerk must file the one containing ballots, and must keep it unopened and unaltered for twelve months, after which time, if there is not a contest commenced in some tribunal having jurisdiction about such election, he must burn the package, without opening or examining its contents.

1266. *When package containing ballots may be destroyed; when opened.*

SEC. 1266. If within twelve months there is such a contest commenced, he must keep the package unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy it, unless such package is, by virtue of an order of the tribunal in which the contest is pending, brought and opened before it, to the end that evidence may be had of its contents, in which event the package and contents are in the custody of such tribunal.

1267. *Returns to be delivered by clerk to supervisors.*

SEC. 1267. The other package the clerk must produce before the board of supervisors, when it is in session for the purpose of canvassing returns.

1268. *Copy of register to be filed in county clerk's office.*

SEC. 1268. As soon as the returns are canvassed the clerk must take the copy of the register returned and file it in his office.

CHAPTER XI.

CANVASS OF RETURNS—DECLARATION OF RESULT—COMMISSIONS AND CERTIFICATES OF ELECTION.

1278. *Meeting of supervisors to canvass returns.*

SEC. 1278. The board of supervisors of each county, except Humboldt, San Diego and Trinity, must meet at their usual place of meeting on the first Monday after each election, to canvass the returns.

1279. *Same.*

SEC. 1279. The board of supervisors of the counties excepted must each meet at its usual place of meeting on the second Monday after each election to canvass the returns.

1280. *Canvass, when to be postponed.*

SEC. 1280. If at the time of meeting the returns from each precinct in the county in which polls were opened have been received, the board must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all of the returns are received, or until six postponements have been had.

(a) Original section:

SEC. 1264. The member to whom such packages are delivered must, before the next succeeding Monday, deliver such packages, without their having been opened, to the county clerk.

1281. *Cavass, how made.*

SEC. 1281. The cavass must be made in public, and by opening the returns and estimating the vote of such county or township for each person voted for, and for and against each proposition voted upon at such election, and declare the result thereof.

1282. *Statement of result to be entered of record.*

SEC. 1282. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the county;
2. The names of the persons voted for, and the propositions voted upon;
3. The office to fill which each person was voted for;
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions;
5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

1283. *Declaration of result.*

SEC. 1283. The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or subdivision thereof.

1284. *Certificates issued by clerk.*

SEC. 1284. The county clerk must immediately make out and deliver to such person (except to the person elected county judge) a certificate of election, signed by him, and authenticated with the seal of the county court.

1285. *District returns, how made up.*

SEC. 1285. When there are officers other than representatives in congress voted for, who are chosen by the electors of a district composed of two or more counties, each of the county clerks of the counties composing such district, immediately after making out the statement specified in section 1282, must make a certified abstract of so much thereof as relates to the election of such officers.

1286. *How transmitted.*

SEC. 1286. The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit the same by mail to the county clerk of the county which stands first in alphabetical arrangement in the list of counties composing such district.

1287. *Duty of clerk receiving district returns.*

SEC. 1287. The clerk to whom the election returns of a district are made must, on the twentieth day after such election, or sooner, if returns from all the counties in the district have been received, open in public such returns, and from them and the statement of the vote for such officers in his own county:

1. Make a statement of the vote of the district for such officers, and file the same, together with the returns, in his office;
2. Transmit a certified copy of such statement to the secretary of state;
3. Make out and deliver or transmit by mail to the persons elected a certificate of election (unless it is by law otherwise provided).

1288. *State returns, how made.*

SEC. 1288. When there has been a judicial election, or when there has been a general or special election for officers chosen by the electors of the state at large, each county clerk, so soon as the statement of the vote of his county is made out and entered upon the records of the board of supervisors, must make a certified abstract of so much thereof as relates to the votes given for persons

for offices to be filled at such judicial election (except justices of the peace) or at such general or special elections.

1289. *How transmitted.*

SEC. 1289. The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit it by mail to the secretary of state.

1290. *Duty of secretary of state relative to.*

SEC. 1290. On the sixtieth day after the day of election, or so soon as the returns have been received from all the counties of the state, if received within that time, the secretary of state must compare and estimate the vote, and make out and file in his office a statement thereof, and transmit a copy of such statement to the governor.

1291. *Commissions issued by governor.*

SEC. 1291. Upon receipt of such copy the governor must issue commissions to the persons who from it appear to have received the highest number of votes for offices, except that of governor or lieutenant-governor, to be filled at such election.

1292. *Returns of election for governor and lieutenant-governor, how made.*

SEC. 1292. When an election has been held to fill the office of governor or lieutenant-governor, the clerk of each county, in addition to the abstract made for transmission to the secretary of state, must, as soon as the statement of the vote of his county is made out and entered upon the records of the board of supervisors, make two certified abstracts of so much thereof as relates to the vote given for such officers.

1293. *How transmitted.*

SEC. 1293. The clerk must seal up each abstract separately, and indorse thereon "Election Returns for governor and lieutenant-governor."

1294. *Same.*

SEC. 1294. He must at once direct one copy to "the speaker of the assembly next to meet," address it to Sacramento, California, and deposit it, post paid, in the post-office.

1295. *Same.*

SEC. 1295. The other copy he must direct and address in the same manner, and at once deliver it to a member elect of the legislature or to a senator who holds over; and the person to whom it is so delivered must deliver it to the speaker on or before the second day next after his election.

1296. *Cavass of returns of election for governor and lieutenant-governor.*

SEC. 1296. The returns of election for governor and lieutenant-governor must during the first week of the session be opened, canvassed, and the result declared by the speaker of the assembly in presence of both houses.

1297. *Defects in form of returns, when to be disregarded.*

SEC. 1297. No declaration of the result, commission, or certificate must be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is elected thereto.

CHAPTER XII.

ELECTION FOR ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

1307. *Electors, when chosen.*

SEC. 1307. At the general election in each bissextile or leap year, unless by the laws of the United States another time is fixed, and then at such time, there

must be chosen by the qualified voters of the state, as many electors of president and vice-president of the United States as the state is then entitled to.

1308. *Returns, how made.*

SEC. 1308. The clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the board of supervisors, must make a certified abstract of so much thereof as relates to the vote given for persons for electors of president and vice-president of the United States.

1309. *How transmitted.*

SEC. 1309. The clerk must seal up such abstract, indorse it "presidential election returns," and without delay transmit it to the secretary of state by mail or in the manner hereinafter prescribed.

1310. *Messenger, when clerk may employ.*

SEC. 1310. If the county clerk of any county has reason to believe that the abstract will not in the due course of mail reach the secretary of state before the time fixed by law for canvassing the returns of such election, he may, with the approval of the county judge, employ a person to convey and deliver such abstract to the secretary of state.

1311. *Proof of necessity for and approval of appointment of messenger.*

SEC. 1311. In the event provided for in the preceding section the clerk must make an affidavit setting forth the reasons for his belief and the name of the person employed by him, which affidavit, with the approval of the county judge indorsed thereon, must be given to the person appointed, and by him, with the abstract, must be delivered to the secretary of state.

1312. *Compensation of messenger.*

SEC. 1312. The person appointed by the clerk, after he delivers the abstract and statement, is entitled to receive as compensation mileage at the rate of thirty cents a mile from the county seat to the seat of government. His account therefor, certified by the secretary of state, must be audited by the controller and paid out of the general fund in the state treasury.

1313. *Duties of secretary of state relative to returns.*

SEC. 1313. On the last Monday in the month of the election, or as soon as the returns have been received from all the counties in the state, if received before that time, the secretary of state must compare and estimate the votes given for electors, and certify to the governor the names of the proper number of persons having the highest number of votes.

1314. *Duty of governor.*

SEC. 1314. The governor must, upon the receipt of such certificate, transmit to each of such persons a certificate of election, and on or before the day of their meeting deliver to the electors a list of the names of electors, and must do all other things required of him in the premises by any act of congress in force at the time.

1315. *Meeting of electors.*

SEC. 1315. The electors chosen must assemble at the seat of government on the first Wednesday in December next after their election, at two o'clock in the afternoon.

1316. *Vacancies in, how supplied.*

SEC. 1316. In case of the death or absence of any elector chosen, or in case the number of electors from any cause be deficient, the electors then present must elect, from the citizens of the state, so many persons as will supply such deficiency.

1317. Voting by electors, and returns.

SEC. 1317. The electors, when convened, must vote by ballot for one person for president and one person for vice-president of the United States, one of whom, at least, is not an inhabitant of this state.

1318. Separate ballots for president and vice-president.

SEC. 1318. They must name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice-president.

1319. Must make lists of persons voted for.

SEC. 1319. They must make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes given for each.

1320. Result to be transmitted to president of United States senate.

SEC. 1320. They must certify, seal up, and transmit by mail such lists to the seat of government of the United States, directed to the president of the senate.

1321. Compensation of electors.

SEC. 1321. Electors receive the same pay and mileage as is allowed to members of the assembly.

1322. How audited and paid.

SEC. 1322. Their accounts therefor, certified by the secretary of state, must be audited by the controller, who must draw his warrants for the same on the treasurer, payable out of the general fund.

CHAPTER XIII.

ELECTIONS FOR MEMBERS OF CONGRESS.

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ARTICLE I.

ELECTION FOR SENATORS.

1332. Elections for full terms.

SEC. 1332. Elections for senators in congress for full terms must be held at the regular session of the legislature next preceding the commencement of the term to be filled.

1333. Elections to fill vacancies.

SEC. 1333. Elections to fill a vacancy in the term of a United States senator must be held at the session of the legislature next succeeding the occurrence of such vacancy.

ARTICLE II.

ELECTIONS FOR REPRESENTATIVES.

1343. When held.

SEC. 1343. At the general election in the year eighteen hundred and seventy-three, and at the general election every two years thereafter, there must be elected, for each congressional district, one representative to the congress of the United States.

[There was "An Act to fix the time for holding elections for members of congress and repeal certain acts," adopted on April 1, 1872; 1871-2, 910. It provided for the election of 1872 only. The above section of the code is the general law now in force.]

1344. Returns, how made.

SEC. 1344. The clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the board of supervisors, must make a certified abstract of so much thereof as relates to the vote given for persons for representatives to congress.

1345. How transmitted.

SEC. 1345. The clerk must seal up such abstract, indorse it "Congressional Election Returns," and without delay transmit it by mail to the secretary of state.

1346. Duty of secretary of state relative to.

SEC. 1346. On the sixtieth day after the day of election, or as soon as the returns have been received from all the counties of the state, if received within that time, the secretary of state must compare and estimate the votes given for such representatives, and certify to the governor the person having the highest number of votes in each congressional district as duly elected.

1347. Certificates issued by governor.

SEC. 1347. The governor must, upon the receipt of such certificate, transmit to each of such persons a certificate of his election, sealed with the great seal and attested by the secretary of state.

CHAPTER XIV.

PRIMARY ELECTIONS.

1357. Resolution to hold primary election under election laws.

SEC. 1357. Any committee or body authorized by the rules or customs of a voluntary political association or organization, to call elections of or for such association or organization, for any purpose, may, by resolution adopted at the time of making the call, elect to have such elections conducted in accordance with the rules prescribed in sections 1083, 1084, 1144, 1145, 1146, 1147, 1148, 1162, 1163, 1164, 1174, 1175, 1192, 1193, 1194, 1195, 1196, 1199, 1200, 1201, 1202, 1203, 1224, 1227, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259 and 1260. [*Amendment approved March 26, 1874; Amendments 1873-4, 74; took effect July 6, 1874.*]^(a)

1358. Resolution, form of.

SEC. 1358. The resolution must declare:

1. The time and place of holding the election and the hours between which the polls are to be kept open;
2. The names of the persons to constitute the election board;
3. The object of the election;
4. That such election will be held under the provisions of the primary election law;
5. The time and manner of the publication of notice of such election;
6. The qualifications required for voters in addition to those prescribed by law.

1359. Notice, form of.

SEC. 1359. The notice of the election must be signed by the secretary of the committee or body, and must contain a copy of the resolution, and must be published as directed in the resolution.

1360. Challenges.

SEC. 1360. In addition to the challenges allowed by law, any person offering

(a) The original section did not refer to sections 1192, 1193, 1194, 1195, 1196 and 1199.

to vote at such election may be challenged upon the grounds that he does not possess the other qualifications prescribed in the resolution, and such challenges must be tried and determined by the board of election, who to that end may administer an oath to such persons, and may ask them any question tending to prove or disprove the challenge.

1361. *None but qualified persons to participate.*

SEC. 1361. None but persons who possess the qualifications prescribed by law and by the resolution must vote or participate in any of the proceedings at such election.

1362. *Returns, how made.*

SEC. 1362. After counting the votes and signing the lists the judges must cause the ballots and one copy of the lists to be delivered to the secretary signing the notice of election, and one of the judges must retain the other lists for twenty days after the election.

1363. *Certificates to be issued by board of judges.*

SEC. 1363. The board of election must issue certificates of election to all persons who are chosen to fill any position by the vote of one precinct alone.

1364. *Canvass of returns and certificate by committee.*

SEC. 1364. The committee or body from which emanated the resolution calling the election may, under such rules as it adopts, open and canvass the returns and issue certificates to persons chosen to fill positions by the voters of more than one precinct.

1365. *What provisions of law applicable to these elections.*

SEC. 1365. All of the provisions of Title IV, Part I of THE PENAL CODE, and all the provisions of the sections referred to in the first section of this chapter, are applicable to elections held under the provisions of this chapter from and after the last publication of the notice mentioned in section 1359.

[Title IV, Part I of THE PENAL CODE, will be found post, 13,041.]

TITLE III.

Education.

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CHAPTER I.

UNIVERSITY OF CALIFORNIA.

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ARTICLE I.

GENERAL PROVISIONS RELATING TO THE UNIVERSITY.

1385. *Object of university.*

SEC. 1385. The university of California, located in Alameda county, has for

its object general instruction and education in all the departments of science, literature, art, industrial and professional pursuits, and special instruction for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine, and commerce.

1386. *Colleges to be maintained.*

SEC. 1386. There must be maintained in the university:

1. A college of letters;
2. A college or colleges of science, including agriculture, mechanics, mining, engineering, chemistry, and such other specialties as the board of regents may determine;
3. College of medicine and law;
4. Such other colleges as the board of regents may establish. [*Amendment, approved March 30, 1874; Amendments 1873-4, 31; took effect July 6, 1874.*^(a)]

1387. *Scope of college of letters.*

SEC. 1387. The college of letters must embrace a liberal course of instruction in language, literature, and philosophy.

1388. *Course of instruction.*

SEC. 1388. Each full course of instruction consists of its appropriate studies and courses, to be determined by the board of regents. [*Amendment, approved March 30, 1874; Amendments 1873-4, 31; took effect July 6, 1874.*^(b)]

1389. *President of university.*

SEC. 1389. The president of the university is the executive head of the institution in all its departments, except as herein otherwise provided.

1390. *Duties of president.*

SEC. 1390. He must, subject to the board of regents, give general direction to the practical affairs of the several colleges, and in the recess of the board of regents may remove any employee or subordinate officer not a member of any faculty, and supply for the time being any vacancies thus created; and until the regents otherwise direct he is charged with the duties of one of the professorships.

1391. *Government and discipline.*

SEC. 1391. The immediate government of the several colleges is intrusted to their respective faculties, each of which must have its own organization, regulate its own affairs, and may recommend the course of study and the text-books to be used.

1392. *Students.*

SEC. 1392. Any resident of California of the age of fourteen years or upwards, of approved moral character, may enter himself in the university as a student at large, and receive tuition in any branches of instruction at the time when the same are given in their regular course, on such terms as the board of regents may prescribe.

1393. *Fees and rates of tuition.*

SEC. 1393. An admission fee and rate of tuition fixed by the board of regents must be required of each pupil, except as herein otherwise provided.

1394. *Free tuition, when.*

SEC. 1394. As soon as the income of the university shall permit, admission and tuition must be free to all residents of the state; and the regents must so apportion the representation of students according to population that all portions of the state may enjoy equal privileges therein.

(a) The original section had the second and third subdivisions as follows:

2. Colleges of law and medicine;
3. Colleges of arts, as follows: of agriculture, mines and civil engineering; and,

(b) Original section:

SEC. 1388. Each full course of instruction consists of its appropriate studies, and must continue for four years.

1395. *Free scholarship.*

SEC. 1395. If approved by the board of regents, scholarships may be established in the university by any persons for the purpose of private benefaction or of affording tuition in any course of the university, free from the ordinary charges, to any scholar in the public schools of the state who may distinguish himself in study, according to the recommendation of his teachers, and who passes the examination required for the grade at which he wishes to enter the university.

1396. *Colleges may be affiliated with university.*

SEC. 1396. The board of regents may affiliate with the university any incorporated college of medicine, law, or other special course of instruction, upon such terms as may be deemed expedient; and such college may retain the control of its own property, have its own board of trustees, faculties, and presidents, respectively; and the students of such colleges, recommended by the respective faculties thereof, may receive from the university the degrees of those colleges.

1397. *Annual examination for degrees.*

SEC. 1397. The examinations for degrees must be annual. Students who have passed not less than a year as residents in any college, academy or school in this state, and who, after examination by the faculty thereof, are recommended by them as proficient candidates for any degree in any regular course of the university, must be examined therefor at the annual examination; and on passing such examination may receive the degree and diploma for that course, and rank as graduates.

1398. *Annual examination for degrees.*

SEC. 1398. All students of the university who have been residents thereat for not less than one year, and all graduates thereof, may present themselves for examination in any course at the annual examinations, and, on passing such examination, may receive the degree and diploma of that course. [*Amendment, approved March 30, 1874; Amendments 1873-4, 31; took effect July 6, 1874.*^(a)]

1399. *Votes for conferring degree.*

SEC. 1399. Upon such examinations each professor and instructor of that course may cast one vote, by ballot, upon each application for recommendation to the board of regents for a degree.

1400. *Degrees to graduates of affiliated colleges.*

SEC. 1400. Graduates of the College of California, and of any incorporated college affiliated with the university, may receive the degrees from and rank as graduates of the university.

1401. *Certificates of proficiency.*

SEC. 1401. The board of regents may also confer certificates of proficiency in any branch of study upon such students of the university as upon examination are found entitled to the same.

1402. *Degrees.*

SEC. 1402. The proper degree of each college must be conferred at the end of the course upon such students as, having completed the same, are found proficient therein.

1403. *Degrees in colleges of letters.*

SEC. 1403. The degree of bachelor of arts, and afterwards the degree of master of arts, in usual course, must be conferred upon the graduates of the college of letters.

(a) The original section had the words "in any course" instead of "thereof," and the word "other" before the words "course at the annual examinations."

1404. *System of manual labor in connection with agricultural college.*

SEC. 1404. A system of moderate manual labor must be established in connection with the agricultural college, upon its agricultural and ornamental grounds, for practical education in agriculture and landscape gardening.

1405. *Sectarian, etc., tests prohibited.*

SEC. 1405. No sectarian, political, or partisan test must ever be allowed or exercised in the appointment of regents, or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatsoever; nor must the majority of the board of regents be of any one religious sect or of no religious belief.

An Act to prohibit the sale of intoxicating liquors within two miles of the university of California.

Approved December 23, 1873; 1873-4, 12.

No liquor to be sold within two miles of university.

SECTION 1. It shall not be lawful for any person or persons to keep or expose for sale, or sell, or give, or permit others to take, for a consideration, directly or indirectly, any malt, spirituous, or other alcoholic liquors, upon or within two miles of the grounds belonging and adjacent to the university of California in Alameda county.

Penalty.

SEC. 2. Any violation of section first of this act, shall be deemed a misdemeanor, punishable by fine, or imprisonment in the county jail of Alameda county, or both. The fine to be not less than fifty dollars nor more than one hundred dollars; and the imprisonment to be not less than thirty nor more than ninety days for each offense.

SEC. 3. This act shall take effect from and after the first day of February, one thousand eight hundred and seventy-four.

An Act to provide a supply of water for the university, and for the asylum for the deaf, dumb and blind.

Approved April 1, 1876; 1875-6, 816.

[This act provided for the condemnation for the use of the university and asylum for the deaf, dumb, and blind, of any springs or natural sources of water supply within a mile and a half of the university grounds.]

ARTICLE II.

ENDOWMENT OF THE UNIVERSITY.

1415. *Endowment.*

SEC. 1415. The indorsement [endowment] of the university is:

1. The proceeds of the sale of the seventy-two sections of land granted to the state for a seminary of learning;

2. The proceeds of the ten sections of land granted to the state for public buildings;

3. The income derived from the investments of the proceeds of the sale of the lands or of the scrip therefor, or of any part thereof, granted to this state for the endowment, support, and maintenance of at least one college where the leading object shall be—without excluding other scientific and classical studies, and including military tactics—to teach such branches of learning as are related to agriculture and the mechanic arts;

4. The income of the fund set apart by "An Act for the endowment of the university of California," approved April second, eighteen hundred and seventy, which is continued in force;

6. The State of California, in its corporate capacity, may take by grant, gift,

devise, or bequest, any property for the use of the university, and hold the same, and apply the funds arising therefrom, through the regents of the university, to the support of the university, as provided in article nine, section four, of the constitution;

7. The regents of the university, in their corporate capacity, may take, by grant, gift, devise, or bequest, any property for the use of the university, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, an observatory, workshops, gardens, greenhouses, apparatus, a students' loan fund, or any other purpose appropriate to the university; and such property shall be taken, received, held, managed, and invested, and the proceeds thereof used, bestowed, and applied by the said regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest;

8. The regents of the university may invest any of the permanent funds of the university, which are now or hereafter may be in their custody, in productive, unincumbered real estate in this state, subject to the power of the legislature to control or change such investments, excepting such as, by the terms of their acquisition, must be otherwise invested;

9. If, by the terms of any grant, gift, devise, or bequest, such as are described in the preceding sixth and seventh subdivisions, conditions are imposed which are impracticable under the provisions of the Civil Code, such grant, gift, devise, or bequest, shall not thereby fail, but such conditions shall be rejected, and the intent of the donor carried out as near as may be. [*Amendment, approved March 30, 1874; Amendments 1873-4, 31; took effect July 6, 1874.*^(a)]

ARTICLE III.

REGENTS OF THE UNIVERSITY.

1425. *University controlled by regents.*

SEC. 1425. The university is under the control of a board of regents, consisting of twenty-two members; but the president of the university, for the time being, shall be a member of the board of regents, by virtue of his office. [*Amendment, approved March 30, 1874; Amendments 1873-4, 33; took effect July 6, 1874.*^(b)]

1426. *Sixteen regents appointed by the governor.*

SEC. 1426. Sixteen members of the board are appointed by the governor, with the advice and consent of the senate. Their term of office is sixteen years.

1427. *Six other regents, appointment of.*

SEC. 1427. Six members of the board hold by virtue of other offices, as provided in section 353.

1428. *Vacancies.*

SEC. 1428. Whenever a vacancy occurs in the board, the governor must appoint some person to fill it, and the person so appointed holds for the remainder of the term.

1429. *President of the board.*

SEC. 1429. The governor is president of the board.

1430. *Quorum.*

SEC. 1430. Seven members constitute a quorum of the board.

(a) The original section did not have the sixth, seventh, eighth and ninth subdivisions, but it had a "5. Donations." The third was as follows:

3. The income derived from the investment of the proceeds of the sale of the lands, or of the scrip there-

for, or of any part thereof, granted to this state for the benefit of agriculture and the mechanic arts.

(b) The original section did not have the last clause, commencing with the words "but the president."

1431. *Regents receive no compensation.*

SEC. 1431. The members receive no compensation.

1432. *General powers and duties of regents.*

SEC. 1432. The powers and duties of the board of regents are as follows:

1. To meet at such times and places as their rules may prescribe, or at the call of the president of the board;
2. To control and manage the university and its property;
3. To prescribe rules for their own government, and for the government of the university;
4. To adopt and prescribe rules for the government and discipline of the cadets;
5. To receive, in the name of the state, or of the board of regents, as the case may be, all property donated to the university;
6. To choose a president of the university, the professors and other officers and employees of the university, prescribe their duties, fix and provide for the payment of their salaries;
7. To fix the qualifications for admission to the benefits of the university;
8. To fix the admission fee and rates of tuition;
9. To appoint a secretary and treasurer, prescribe their duties, and fix and provide for the payment of their compensation;
10. To remove, at pleasure, any officer, professor or employee of the university;
11. To supervise the general courses of instruction, and, on the recommendation of the several faculties, prescribe the authorities and text-books to be used in the several colleges;
12. To confer such degrees, and grant such diplomas, as are usual in universities, or as they deem appropriate;
13. To establish and maintain a museum;
14. To establish and maintain a library;
15. To take immediate measures for the permanent improvement and planting of the university grounds;
16. To keep a record of all their proceedings;
17. Through the president of the university, to report to the governor the progress, condition and wants of each of the colleges embraced in the university; the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost and results of all important investigations and experiments, and such other information as they may deem important. [*Amendment, approved March 30, 1874; Amendments 1873-4, 33; took effect July 6, 1874.*^(a)]

1433. *Income arising from endowment at disposition of regents.*

SEC. 1433. The entire income arising from the endowment is subject to the trusts at the disposition of the board of regents for the support of the university.

1434. *Fund to be set apart for current expenses.*

SEC. 1434. For the current expenditures of the university specific sums of money must be set aside, out of the funds at their disposal, by the board of regents, which are subject to the warrants of the president of the board, drawn upon the treasurer of the university in pursuance of the orders of the board of regents.

(a) The original section had eighteen subdivisions, the fifth, twelfth and fifteenth of which were as follows:

5. To receive, in the name of the university and for its benefit, all property donated to it;

12. To confer such degrees and grant such diplomas

as are usual in universities, or as they deem appropriate;

15. To maintain a preparatory department, under such rules and regulations as it may provide, and to employ such teachers, and secure such buildings, by purchase or otherwise, as are necessary therefor.

1435. *Funds may be drawn from state treasurer.*

SEC. 1435. All moneys which may at any time be in the state treasury, subject to the use of the board of regents, may be drawn therefrom by the president of the board, upon the order of the board, in favor of the treasurer of the university. [*Amendment, approved March 30, 1874; Amendments 1873-4, 35; took effect July 6, 1874.*^(a)]

1436. *Construction of buildings.*

SEC. 1436. The regents must cause to be constructed such buildings as are needed for the use of the university.

1437. *Plan of buildings.*

SEC. 1437. The plan adopted in the construction of buildings must provide separate buildings for separate uses, and so group all such buildings that a central building may bring the whole in harmony as part of one design.

1438. *Bids for construction and furnishing buildings.*

SEC. 1438. The construction and furnishing of the buildings must be let out to the lowest responsible bidder, after advertisement for not less than ten days in at least two daily newspapers published in the city of San Francisco; but the regents may reject any bid, and advertise anew.

1439. *Temporary buildings.*

SEC. 1439. Until the university buildings are ready for use, the regents may make temporary arrangements for buildings at Oakland.

ARTICLE IV.

SECRETARY OF THE BOARD OF REGENTS.

1449. *Qualifications and choice of secretary.*

SEC. 1449. A practical agriculturist, competent to superintend the working of the agricultural farm and to discharge the duties of secretary of the board of regents, must be chosen by the board as their secretary.

1450. *Residence and duties of secretary.*

SEC. 1450. The secretary must:

1. Reside and keep his office at the seat of the university;
2. Keep a record of the transactions of the board of regents, which must be open at all times to the inspection of any citizen of this state;
3. Have the custody of all books, papers, documents, and other property which may be deposited in his office;
4. Keep and file all reports and communications which may be made to the university appertaining to education, science, art, husbandry, mechanics, or mining;
5. Address circulars to societies and others, soliciting information upon the latest and best modes of culture of the products adapted to the soil and climate of the state, and on all subjects connected with field culture, horticulture, stock raising, and the dairy;
6. Correspond with established schools of mining and metallurgy in Europe, and obtain information respecting the improvements of mining machinery adapted to California;
7. Correspond with the patent office at Washington, and with the representatives of the government of the United States abroad, to procure contributions to agriculture from these sources; receive and distribute seeds, plants, shrubbery, and trees adapted to our climate and soils, for the purposes of experiment;

(a) The original section did not have the words "of the board" after the word "president."

8. Obtain contributions to the museums and the library of the university;
 9. Keep a correct account of all the executive acts of the president of the university;

10. Keep an accurate account of all moneys received into the treasury or paid therefrom;

11. Distribute the seeds, plants, trees, and shrubbery received by him, and not needed by the university, equally throughout the state, to farmers and others who will agree to cultivate them properly and return to the secretary's office a reasonable proportion of the products thereof, with a statement of the mode of cultivation, and such other information as may be necessary to ascertain their value for cultivation in the state;

12. Publish from time to time in the newspapers of the state, free of charge, information relating to agriculture, the mechanic arts, mining, and metallurgy.

1451. Term and compensation.

SEC. 1451. The secretary holds office at the pleasure of and receives the compensation fixed by the board.

ARTICLE V.

ACADEMIC SENATE OF THE UNIVERSITY.

1461. Academic senate.

SEC. 1461. The academic senate is composed of the faculties and instructors of the university.

1462. General powers of.

SEC. 1462. The senate must conduct the general administration of the university, regulate the general and special courses of instruction, receive and determine all appeals from acts of discipline enforced by the faculty of any college, and exercise such other powers as the board of regents may confer upon it.

1463. Proceedings of.

SEC. 1463. Its proceedings must be conducted according to rules of order adopted by it, and every person engaged in instruction in the university may participate in its discussions; but the right of voting is confined to the president and the professors.

ARTICLE VI.

UNIVERSITY CADETS.

1473. University cadets.

SEC. 1473. The students of the university must be organized into a body known as the "University Cadets."

1474. Officers of cadets.

SEC. 1474. The officers of cadets, between and including the ranks of second lieutenant and colonel, must be selected by the chief military instructor, with the assent of the president of the university, and must be commissioned by the governor. [*Amendment, approved March 30, 1874; Amendments 1873-4, 35; took effect July 6, 1874.*^(a)

1475. Equipment of cadets.

SEC. 1475. The adjutant-general of the state must issue such arms, munitions, accoutrements, and equipments to the university cadets as the board of regents may require and the governor approve. [*Amendment, approved March 30, 1874; Amendments 1873-4, 35; took effect July 6, 1874.*^(b)

(a) Original section:

SEC. 1474. The officers of cadets, between and including the ranks of second lieutenant and colonel, must be elected by the academic senate after a competitive examination, involving both scholarship and

capacity for command, and must be commissioned by the governor.

(b) The original section did not have the words "arms" or "accoutrements."

1476. Retired officers of.

SEC. 1476. Upon graduating or retiring from the university, such officers may resign their commissions or hold the same as retired officers of the university cadets, liable to be called into service by the governor in case of war, invasion, insurrection, or rebellion.

1477. Report of military instructor.

SEC. 1477. The military instructor must make quarterly reports to the adjutant-general of the state, showing the number, discipline, and equipments of the cadets.

CHAPTER II.

STATE NORMAL SCHOOL.

1487. Object of school.

SEC. 1487. The state normal school, located at San Jose, has for its object the education of teachers for the public schools.

1488. Under control of board of trustees.

SEC. 1488. It is under the management and control of a board of trustees, constituted as provided in Title I of Part III of this Code. [See ante, 354.]

1489. General powers and duties of board.

SEC. 1489. The powers and duties of the board of trustees, are as follows:

1. To prescribe rules for their own government, and for the government of the school;

2. To prescribe rules for the reports of officers and teachers of the school, and for visiting other schools and institutes;

3. To prescribe the course of study, and the time and standard of graduation;

4. To prescribe the text-books, apparatus, and furniture, and provide the same, together with all stationery, for the use of the pupils;

5. To establish and maintain training or model schools, and require the pupils of the normal school to teach and instruct classes therein;

6. To elect a principal and other necessary teachers, fix their salaries and prescribe their duties;

7. To issue diplomas of graduation upon the recommendation of the faculty of the school;

8. To control and expend all moneys appropriated for the support and maintenance of the school, and all moneys received for tuition, or from donations; in no event shall any moneys appropriated for the support of the school, or received from tuition or donations, be paid or used for compensation or traveling expenses of the trustees of the school;

9. To keep a record of their proceedings;

10. To keep open to public inspection an account of receipts and expenditures;

11. To annually report to the governor a statement of all their transactions, and of all matters pertaining to the school;

12. To transmit with such report a copy of the principal teacher's annual report.

13. To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputably dishonest in his dealings; provided, that such person shall have at least thirty days previous notice of such contemplated action, and shall, if he asks it, be heard in his own defense. [*Amendment, approved March 30, 1874; Amendments 1873-4, 75; took effect immediately.*^(a)

(a) The original section did not have the thirteenth subdivision. In the eighth it did not have the last clause commencing with the words "In no event." The seventh subdivision was as follows:

7. To issue certificates of standing and of graduation.

1490. Regular meetings of board.

SEC. 1490. The board must hold two regular meetings in each year.

1491. Special meetings of board.

SEC. 1491. It may hold special meetings at the call of the secretary.

1492. Time and place of meeting of board.

SEC. 1492. The time and place of regular meetings must be fixed by the by-laws. The secretary must fix and give written notice of the time and place of special meetings.

[SEC. 1493^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 79; took effect immediately.]

1494. General qualifications for admission as pupil.

SEC. 1494. Every person admitted as a pupil of the normal school course must be:

1. Of good moral character;
2. Of sixteen years of age;
3. Of that class of persons who, if of a proper age, would be admitted in the public schools of this state without restriction. [*Amendment, approved March 30, 1874; Amendments 1873-4, 76; took effect immediately.*]^(b)

1495. Pupils from state at large.

SEC. 1495. Teachers holding state certificates of the first or second grades may be admitted from the state at large.

1496. Pupils from other states.

SEC. 1496. Persons resident of another state may be admitted upon letters of recommendation from the governor or superintendent of schools thereof. [*Amendment, approved March 30, 1874; Amendments 1873-4, 77; took effect immediately.*]^(c)

1497. Pupils to file certain declaration.

SEC. 1497. Every person making application for admission as a pupil to the normal school must, at the time of making such application, file with the principal of the school a declaration that he enters the school to fit himself for teaching, and that it is his intention to engage in teaching in the public schools of this state, or in the state or territory where the applicant resides. [*Amendment, approved March 30, 1874; Amendments 1873-4, 77; took effect immediately.*]^(d)

[Secs. 1498, 1499 and 1500 ^(e) were repealed by act approved March 30, 1874; Amendments 1873-4, 79; took effect immediately.]

1501. Principal to make annual report.

SEC. 1501. The principal of the school must make a detailed annual report to the board of trustees, with a catalogue of the pupils, and such other particulars as the board may require or he may think useful.

1502. To attend county institutes.

SEC. 1502. He must also attend county institutes, and lecture before them on subjects relating to public schools and the profession of teaching.

(a) Repealed section:

SEC. 1493. At one of the regular meetings in each year the board must determine the number of pupils to be admitted from the counties, and this number must be apportioned among the counties in proportion to the number of members of the assembly from each.

(b) The original section did not have the words "of the normal school course," and in the second subdivision it had the words "over sixteen" instead of "of sixteen."

(c) The original section had the following additional words, "and upon payment of one hundred dollars."

(d) Original section:

SEC. 1497. Every person resident of this state must, upon admission as a pupil, sign and file with the sec-

retary a declaration that he enters the school to fit himself for teaching, and that it is his intention to engage in teaching in the public schools of this state.

(e) Repealed sections:

SEC. 1498. The board of examiners of each county must, before the first day of May in each year, hold competitive examinations of all qualified persons desiring to be admitted from such county as pupils in the normal school.

SEC. 1499. Such examinations must be held in the same manner as examinations for third grade county certificates.

SEC. 1500. Persons passing such examination must, in the order of their proficiency to the number apportioned to such county, upon the certificate of the board of examiners, be admitted as pupils of the normal school.

1503. Diplomas and certificates, when to issue.

SEC. 1503. Upon the recommendation of the faculty of the school, the board of trustees may issue to those who worthily complete the full course of study and training prescribed, a diploma of graduation. To the persons receiving this diploma, the state board of examination shall grant a first-grade state certificate. In like manner they shall issue to those who worthily complete the post graduate course, a professional diploma. To the persons receiving this diploma, the state board of examination shall grant an educational diploma; and they may, at their discretion, issue an elementary diploma to those who worthily complete such part of the course of study and training as may be prescribed. To the persons receiving this diploma, the state board of education shall grant a second-grade state certificate. [*Amendment, approved March 30, 1874; Amendments 1873-4, 77; took effect immediately.*^(a)]

1504. Secretary of board of trustees.

SEC. 1504. The board of trustees shall have power to appoint a secretary, who shall receive no compensation. A full record of all the proceedings of the board of trustees shall be kept at the school, and shall be open to public inspection. [*Amendment, approved March 30, 1874; Amendments 1873-4, 78; took effect immediately.*^(b)]

1505. Supervision by superintendent of public instruction.

SEC. 1505. The superintendent of public instruction must visit the school from time to time, inquire into its condition and management, enforce the rules and regulations made by the board, require such reports as he deems proper from the teachers of the school, and exercise a general supervision over the same. [*Amendment, approved March 30, 1874; Amendments 1873-4, 78; took effect immediately.*^(c)]

1506. Biennial appropriation to be made.

SEC. 1506. The sum of twenty-four thousand dollars must be appropriated biennially, out of any moneys in the general fund not otherwise appropriated, one half of which appropriation must be set apart at the commencement of each fiscal year to support the state normal school. Whenever, at the close of any fiscal year, a balance remains to the credit of the state normal school fund, such balance must be carried forward and added to the appropriation for the succeeding year.

1507. Orders on controller, how drawn.

SEC. 1507. All orders upon the controller of state by the board of trustees, must be signed by the president of the board, and countersigned by the secretary. Upon presentation of the order aforesaid, signed and countersigned as aforesaid, the controller of state must draw his warrant on the state treasurer in favor of the board of trustees for the moneys, or any part thereof, appropriated and set apart for the support of the normal school, and the treasurer must pay such warrant on presentation. [*Amendments, approved March 30, 1874; Amendments 1873-4, 78; took effect immediately.*^(d)]

[The following acts in relation to the state normal school may here be referred to:]

(a) Original section:

SEC. 1503. Every person holding a diploma issued by the board of trustees of the normal school may teach in the public schools of this state for the time and in the grade prescribed by the diploma.

(b) Original section:

SEC. 1504. The superintendent of public instruction is the secretary and executive agent of the board.

(c) Original section:

SEC. 1505. As such agent he must visit the school

from time to time, inquire into its condition and management, enforce the rules and regulations made by the board, require such reports as he deems proper from the teachers of the school and officers of the boarding-house, and exercise a general supervision over the same.

(d) The original section read, "when ordered by the board of trustees, the controller must draw his warrant on the state treasurer," and so on as in the amendment after "state treasurer."

An Act to provide for finishing the state normal school building and paying the indebtedness incurred in the construction thereof.

Approved March 29, 1872; 1871-2, 669.

[This act, as its title imports, provided for the completion of the state normal school building at San Jose.]

An Act making an appropriation for the purchase of apparatus for the state normal school.

Approved March 23, 1874; 1873-4, 518.

[This act appropriated \$3000 for the purpose indicated in the title.]

An Act to appropriate money to complete the state normal school building and for the improving of the grounds.

Approved March 25, 1874; 1873-4, 603.

[This act appropriated \$25,000 for the purpose indicated.]

An Act to appropriate the sum of \$13,000 to make certain repairs on the state normal school and to provide furniture therefor, and also to provide for a deficiency in the appropriation for the twenty-sixth and twenty-seventh fiscal years, for said school.

Approved March 25, 1876; 1875-6, 482.

[This act appropriated \$13,000 for the purposes indicated in its title.]

CHAPTER III.

PUBLIC SCHOOLS.

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ARTICLE I.

STATE BOARD OF EDUCATION.

1517. *Board, how constituted.*

SEC. 1517. The state board of education consists of the governor, the superintendent of public instruction, the principal of the state normal school, and the school superintendents of San Francisco, Sacramento, Santa Clara, Alameda, Sonoma, and San Joaquin counties.

1518 *Organization of.*

SEC. 1518. The governor is the president, and the superintendent of public instruction the secretary of the board.

1519. *Concurrence of a majority of all members necessary.*

SEC. 1519. A concurrence of a majority of all the members is necessary to the validity of any act of the board.

1520. *Meetings of.*

SEC. 1520. The board meets at the call of the secretary, and not less than twice in each year.

1521. *General powers and duties.*

SEC. 1521. The powers and duties of the board are as follows:

1. To adopt rules and regulations, not inconsistent with the laws of this state, for its own government, and for the government of the public schools and district school libraries;
2. To prescribe and enforce rules for the examination of teachers;
3. To prescribe a standard of proficiency before a county board of examination which will entitle a person examined by such board to a state certificate;
4. To prescribe and enforce the course of study in the public schools;
5. To prescribe and enforce the use of a uniform series of text-books in the public schools, except in the city and county of San Francisco;
6. To adopt a list of books for district school libraries;
7. To grant or to revoke, for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, life diplomas;
8. To review, on appeal, an order revoking a state certificate or diploma;
9. To have done by the state printer, or other officer having the management of the state printing, any printing required by it;
10. To adopt, and use in the authentication of its acts, an official seal;
11. To keep a record of its proceedings. [*Amendment, approved March 13, 1874; Amendments 1873-4, 79; took effect from passage.*^(a)]

1522. *Traveling expenses.*

SEC. 1522. The actual traveling expenses of the members incurred in attending the meetings of the board must be audited by the controller, and paid out of the general fund in the state treasury.

ARTICLE II.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

1532. *General duties of superintendent.*

SEC. 1532. It is the duty of the superintendent of public instruction:

1. To superintend the public schools in this state;
2. To report to the governor, on or before the fifteenth day of November, of the years on which the regular session of the legislature are held, a statement of the condition of the state normal school and other educational institutions supported by the state, and of the public schools;
3. To accompany his report, tabular statements, showing the number of school children in the state; the number attending public schools, and the average attendance; the number attending private schools, and the number not attending schools; the amount of state school fund apportioned, and sources from which derived; the amount raised by county and district taxes, or from other sources of revenue, for school purposes; and the amount expended for salaries of teachers, and for building schoolhouses;
4. To apportion the state school funds, and furnish the controller, state

(a) The original section differed in the fifth, seventh and ninth subdivisions, which were as follows:
5. To prescribe and enforce the use of a uniform series of text-books in the public schools, except in incorporated cities and towns;

7. To grant life diplomas;

9. To have done by the state printer any printing required by it.

board of examiners, and each county treasurer and county superintendent, with an abstract of such apportionment;

5. To draw his order on the controller in favor of each county treasurer, for the school moneys apportioned to the county;

6. To prepare, have printed, and furnish to all officers charged with the administration of the laws relating to public schools, and to teachers, such blank forms and books as may be necessary to the discharge of their duties;

7. To have the law relating to the public schools printed in a pamphlet form, and annex thereto forms for making reports and conducting school business, the course of study, rules and regulations, a list of text-books and library books, and such suggestions on school architecture as he may deem useful;

8. To supply school officers and teachers, school libraries, and state libraries with one copy each of the pamphlet mentioned in the preceding subdivision;

9. To visit the several orphan asylums to which state appropriations are made, and examine into the course of instruction therein;

10. To visit the schools in the different counties, and inquire into their condition; and the actual traveling expenses thus incurred, provided they do not exceed fifteen hundred dollars, shall be allowed, audited, and paid out of the general fund in the same manner as other claims are audited and paid;

11. To authenticate, with his official seal, all drafts, or orders drawn on him, and all papers and writings issued from his office;

12. To have bound, at an annual expense of not more than one hundred and fifty dollars, all valuable school reports, journals, and documents, in his office, or hereafter received by him, payable out of the state school fund;

13. To deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers belonging to his office, or which may have been received by him for the use of his office. [*Amendment, approved March 28, 1874; Amendments 1873-4, 86; took effect from passage.*]^(a)

1533. *Annual report to controller of number of children.*

SEC. 1533. The superintendent of public instruction must report to the controller, on or before the tenth day of August, of each year, the total number of children in the state between the ages of five and seventeen years, as shown by the latest reports of the school superintendents on file in his office. [*New section, approved March 13, 1874; Amendments 1873-4, 84; took effect from passage.*]

ARTICLE III.

SCHOOL SUPERINTENDENTS.

[SEC. 1542^(b) was repealed by act approved February 27, 1874, and again by act approved March 13, 1874; Amendments 1873-4, 113 and 84; the latter took effect from passage.]

1543. *General duties of school superintendents.*

SEC. 1543. It is the duty of the county superintendent of each county:

1. To apportion the school moneys of each school district quarterly;
2. On the order of the board of trustees, or board of education, to draw his warrant upon the county treasurer against the school fund of any city, town,

(a) The original section did not have the thirteenth subdivision, and differed in the second, fourth and tenth subdivisions, which were as follows:

2. To report to the governor a statement of the condition of the state normal school, and other educational institutions supported by the state, and of the public schools;

4. To apportion the school funds, and furnish the controller, board of examiners, and each county treas-

urer and school superintendent with an abstract of such apportionment;

10. To visit the schools of the different counties, and inquire into their condition.

(b) Repealed section:

SEC. 1542. No person is eligible to the office of school superintendent who is not a professional teacher, possessing a first grade certificate.

or district; he must draw his warrants in the order in which they are ordered by the proper authority; each warrant must specify the purpose for which the money is required, and must be paid in the order in which it is drawn, but no warrant must be drawn unless there is sufficient money in the fund to pay it;

3. To keep open to the inspection of the public a register of warrants, showing the fund upon which the warrants have been drawn, the number thereof, in whose favor, and for what service drawn, and also a receipt from the person to whom the warrant was delivered;

4. To visit each school in his county at least once in each year; and for every school not visited the board of supervisors must, on proof thereof, deduct ten dollars from the county superintendent's salary;

5. To preside over teachers' institutes held in his county, and to secure the attendance thereof of lecturers competent to instruct in the art of teaching, to enforce the course of study, the use of the text-books, and the rules and regulations for the examination of teachers prescribed by the proper authority;

6. To issue temporary certificates, valid until the next regular meeting of the county board of examination, to persons holding certificates of like grade granted in other counties;

7. To certify to the state board of examination the names of persons examined before county boards of examination;

8. To distribute all laws, reports, circulars, instructions, and blanks, which he may receive for the use of school officers;

9. To keep in his office the reports of the superintendent of public instruction and a file of the educational journal;

10. To keep a record of his official acts, and of the proceedings of the county board of examination, including a record of the standing in each study of all applicants examined;

11. To keep in his office such works on school architecture and education as may be prescribed by the state board of education, and pay for them out of the unapportioned county school fund;

12. To (except in incorporated cities and towns) pass upon, and approve, and reject plans for schoolhouses;

13. To appoint trustees to fill all vacancies created by failure to elect, or otherwise, to hold till the next annual election;

14. To make reports when directed by the superintendent of public instruction, showing such matters relating to the public schools in his county as may be required of him;

15. In all counties containing twenty thousand inhabitants, or upwards, to devote his whole time to the supervision of the schools in his county;

16. To carefully preserve all reports of school officers and teachers, and, at the close of his official term, deliver to his successor all records, books, documents, and papers, belonging to the office, taking a receipt for the same, which shall be filed in the office of the county clerk. [*Amendment, approved March 28, 1874; Amendments 1873-4, 88; took effect from passage.*^(a)]

(a) The original section did not have the sixteenth subdivision, and differed in the second, fourth, ninth, tenth, twelfth and thirteenth, which were as follows:

2. On the order of the board of trustees or board of education, to draw his warrant upon the county treasurer against the school fund of any city, town or district;

4. To visit each school in his county at least once in each year;

9. To keep in his office the reports of the superintendent and a file of the educational journal;

10. To keep a record of his official acts, and of the proceedings of the county board of examination;

12. To (except in incorporated cities and towns) pass upon and approve or reject plans for schoolhouses;

13. To appoint trustees for any district which fails to elect at the annual election.

An Act to provide for the distribution of school moneys in certain counties.

Approved March 18, 1876; 1875-6, 332.

Counties affected, apportionment.

SECTION 1. The county superintendents of the counties of Fresno, Contra Costa, Shasta, Lassen, shall apportion the school moneys as follows:

1. He shall apportion five hundred dollars to each school district;
2. He shall ascertain the number of census children required to be entitled to five hundred dollars, if a pro rata distribution of all school moneys were made, and the excess, after apportioning five hundred dollars to each school district in the county, shall be apportioned among the districts having a greater number of census children than required to be entitled to five hundred dollars, in proportion to the number in each district in excess of said number; provided, that in Fresno county, Contra Costa county, and Shasta county, no district which is entitled to only one teacher shall receive more than twelve hundred dollars, and no district shall be considered entitled to two teachers unless that district sustain two separate schools, or one school which has an average daily attendance of more than sixty students, as shown by the school register of that district for the next preceding year; and if there be an excess of money in such district, it shall be redistributed among the other districts, as provided in this act.

SEC. 2. This act shall take effect and be in force from and after the thirtieth (30) of June, eighteen hundred and seventy-six.

An Act to provide for the distribution of school moneys in the county of Marin.

Approved March 30, 1876; 1875-6, 568.

Superintendent to apportion moneys.

SECTION 1. The school superintendent of Marin county must apportion all state and county school moneys as follows:

1. He must ascertain the number of teachers each district is entitled to, by calculating one teacher for every seventy-five census children or fraction thereof of not less than fifteen census children, as shown by the next preceding school census;

2. He must ascertain the total number of teachers for the county by adding together the number of teachers assigned to the several districts;

3. Five hundred dollars shall be apportioned to each district for every teacher assigned it; provided, that to districts having ten and less than fifteen census children, shall be apportioned three hundred dollars.

4. All school moneys remaining on hand after apportioning five hundred dollars to each district having fifteen census children or more, for every teacher assigned it, and after apportioning three hundred dollars to districts having less than fifteen census children, must be apportioned to the several districts having not less than twenty-five census children, in proportion to the number of census children in each district.

SEC. 2. This act shall take effect from and after the thirtieth day of June, one thousand eight hundred and seventy-six.

1544. *Forfeiture for failure to report.*

SEC. 1544. If he fails to make a full and correct report, required under the provisions of subdivision fourteen of section fifteen hundred and forty-three, at the time fixed by the superintendent of public instruction, he forfeits one hundred dollars of his salary, and the board of supervisors, upon receiving from the superintendent of public instruction notice of such failure, must deduct the amount forfeited from his salary. [*Amendments, approved March 28, 1874; Amendments 1873-4, 90; took effect from passage.*^(a)]

(a) Original section:
SEC. 1544. If he fails to make any report required under the provisions of subdivision 14 of section 1543, he forfeits one hundred dollars of his salary, and the

board of supervisors, upon receiving from the superintendent notice of such failure, must deduct the amount forfeited from his salary.

1545. *May appoint teachers and open schools, when.*

SEC. 1545. He must, when there is sufficient money in the fund of any school district to maintain a school therein for five months, if the trustees fail to have such school kept, appoint a teacher and open and keep such school, and may draw his warrant upon the fund of such district for the expense incurred.

1546. *May direct repairs, etc., when.*

SEC. 1546. He may, in his discretion, require the trustees of any district to repair the school buildings or property, or to abate any nuisance in or about the premises, if such repairs or abatement can be done for a sum not exceeding fifty dollars, and there is a sufficient amount of money in the treasury to the credit of the district. He may also in all cases require the trustees to provide suitable outhouses, and, where practicable, to adorn the grounds with fruit and ornamental trees and shrubbery; and if the trustees neglect to make such provision, he may cause it to be done, and pay for it on his own warrant out of any money to the credit of the district.

[Sec. 1547^(a) was repealed by act approved March 28, 1874; Amendments 1873-4, 111; took effect from passage.]

1548. *Warrants for expenses and claims.*

SEC. 1548. He must draw his warrants on the unapportioned county school fund for the payment of members of the county board of examination, and in his own favor for the binding of school documents, not to exceed twenty dollars a year; for postage and expressage for his office, not to exceed one dollar for each district in his county, and for any other incidental expense as may be authorized by law. [Amendment, approved March 28, 1874; Amendments 1873-4, 90; took effect from passage.^(b)]

1549. *May appoint deputy.*

SEC. 1549. Each county superintendent may appoint a deputy, but no salary payable out of the school fund must be allowed such deputy. [Amendment, approved March 28, 1874; Amendments 1873-4, 90; took effect from passage.^(c)]

1550. *Compensation of deputy in San Francisco.*

SEC. 1550. The deputy school superintendent of the city and county of San Francisco may receive such compensation as the board of education thereof prescribes, payable in the same manner and out of the same fund as the school superintendent thereof is paid.

1551. *School superintendent to report number of children.*

SEC. 1551. Each school superintendent in this state must, on or before the first day of August in each year, report to the superintendent of public instruction, and to the board of supervisors of their respective counties, the number of children in their counties between the ages of five and seventeen years, as appears by the latest returns of the census marshal on file in their office. [New section, approved March 13, 1874; Amendments 1873-4, 85; took effect from passage.]

Duty as to boundaries of school districts.

SEC. 1551. It shall be the duty of every county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the board of supervisors, and to keep in

(a) Repealed section:

SEC. 1547. He must draw warrants in the order in which they are ordered by the proper authority. Each warrant must specify the purpose for which the money is required, and must be paid in the order in which it is drawn; but no warrant can be drawn unless there is sufficient money in the fund to pay it.

(b) The original section down to and including the words "for the binding" was as follows:

SEC. 1548. He must draw his warrant on the county treasurer for any bill audited by the trustees of any district and authorized by law in his own favor on the unapportioned county school money for the payment of members of the county board of examiners for the binding, etc.

(c) The original section had the word "school" instead of "county."

his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize, and describe them, and make a report of such action to the supervisors, and, on being ratified by the supervisors, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. For searching and transcribing such records and equalizing district boundaries, he may be allowed five dollars per day for each day's labor, to be paid out of the county school fund. The county superintendent, if he deem it necessary for the guidance of school census marshals, may order the descriptions of the district boundaries to be printed in pamphlet form, and pay for the same out of the county school fund. [*New section, approved March 28, 1874; Amendments 1873-4, 91; took effect from passage.*]

1552. *Compensation and allowance for expenses.*

SEC. 1552. Each county superintendent, except when otherwise provided by statute, shall receive such salary and his reasonable traveling expenses, to be estimated by the board of supervisors, and as may be allowed by the board of supervisors, which shall be paid out of the county general fund, in the same manner as other salaried county officers are paid; provided, that such compensation shall not be less than a sum equal to twenty dollars for each school district in his county, exclusive of traveling expenses, and that he shall be allowed, in addition to his salary, a sum for postage and expressage, payable out of the county school fund, equal to one dollar for each school district; provided, that in incorporated cities, each school containing three hundred pupils should be considered equal to one school district. [*New section, approved March 28, 1874; Amendments 1873-4, 91; took effect from passage.*]

1553. *Superintendent, when not to teach.*

SEC. 1553. No school superintendent who receives an annual salary of fifteen hundred dollars, or more, must follow the profession of teaching, or any other avocation that can conflict with his duties as superintendent; but those receiving less than fifteen hundred dollars per annum may teach in the public schools of this state. [*Amendment, approved March 11, 1876; Amendments 1875-6, 26; took effect immediately.*^(a)]

ARTICLE IV.

TEACHERS' INSTITUTES.

1560. *Institutes to be held annually in certain counties.*

SEC. 1560. Whenever the number of school districts in any county is twenty, or more, the county superintendent must hold at least one teachers' institute in each year; and every teacher employed in a public school in the county must attend such institute and participate in its proceedings. [*Amendment, approved March 28, 1874; Amendments 1873-4, 92; took effect from passage.*^(b)]

1561. *When held in other counties.*

SEC. 1561. In any county in which there are less than twenty school districts, the county superintendent may, in his discretion, hold an institute. [*Amendment, approved March 28, 1874; Amendments 1873-4, 92; took effect from passage.*^(c)]

(a) The original was a new section added by act of March 13, 1874; Amendments 1873-4, 85; took effect from passage. It was numbered section 1552, which number was changed by the amendatory act of 1876 to section 1553. It did not have the last clause commencing with the words "but those receiving."

(b) Original section.

SEC. 1560. Whenever the number of school districts

in any county is ten or more, the school superintendent must hold at least one teachers' institute in each year, and every teacher employed in a public school in the county must attend such institute.

(c) Original section:

SEC. 1561. In any county in which there are less than ten school districts, the superintendent may in his discretion hold an institute.

1562. *Length of sessions.*

SEC. 1562. Each session of the institute must continue not less than three nor more than five days.

1563. *Pay of teachers in attendance.*

SEC. 1563. When the institute is held during the time that teachers are employed in teaching, their pay must not be diminished by reason of their attendance.

1564. *Expenses of institute, how paid.*

SEC. 1564. The county superintendent must keep an accurate account of the actual expenses of said institute, with vouchers for the same, and draw his warrant on the unapportioned county school fund to pay said amount; provided, that such amount must not exceed one hundred dollars for any one year. [*Amendment, approved March 28, 1874; Amendments 1873-4, 92; took effect from passage.*^(a)]

ARTICLE V.

SCHOOL DISTRICTS.

1575. *Names of districts.*

SEC. 1575. Every school district must be designated by the name and style of "—— district (using the name of the district), of —— county" (using the name of the county in which such district is situated); and in that name the trustees may sue and be sued, and hold and convey property for the use and benefit of such district. A number must not be used as a part of the designation of any school district.

1576. *What forms districts.*

SEC. 1576. Each county, city, or incorporated town, unless subdivided by the legislative authority thereof, forms a school district.

1577. *Formation of new and changing boundaries of old districts.*

SEC. 1577. No new district can be formed unless the parents or guardians of at least fifteen census children, resident of such proposed new district, and residing at a greater distance than two miles from any district schoolhouse, present a petition to the county superintendent, setting forth the boundaries of the new district asked for. The boundaries of any district cannot be changed, unless at least ten heads of families residing in the district present a petition to the county superintendent, setting forth the change of boundaries desired, and the reasons for the same. [*Amendment, approved March 20, 1876; Amendments 1875-6, 27; took effect from passage.*^(b)]

1578. *Duties of superintendent on receipt of petition for either.*

SEC. 1578. After giving due notice to all parties interested, by posting notices in three public places in the district, one of which shall be at the door of the schoolhouse for at least one week, the county superintendent must transmit the petition to the board of supervisors, with his approval or disapproval. If he approves the petition, he may note such changes in the boundaries as he may

(a) Original section:

SEC. 1564. For the payment of the expenses of institutes, a sum not exceeding one hundred dollars in any one year must be paid, on the warrant of the superintendent of each county, out of the unapportioned county school fund. The superintendents of two or more counties may unite and hold a joint institute, in which case the expenses must be apportioned by the superintendents between the counties joining in the institute.

(b) Original section:

SEC. 1577. No new district can be formed, nor can the boundaries of any district be changed, unless at

least ten heads of families present a petition to the school superintendent, setting forth the boundaries of the new district asked for, or the change of boundaries desired, with reasons for the same.

It was previously amended by act of March 28, 1874, Amendments 1873-4, 92, so as to read like the text, except that it did not have the words "and residing at a greater distance than two miles from any district schoolhouse" in the first sentence. In the second sentence, instead of "in the district" it had the words "at a greater distance than two miles from any district schoolhouse."

think desirable. [*Amendment, approved March 28, 1874; Amendments 1873-4, 93; took effect from passage.*^(a)

1579. *Duties of supervisors on same.*

Sec. 1579. The board of supervisors must, at their first meeting after the receipt of the petition, act upon the same. If the board establishes the district, they may do so in accordance with the original prayer of the petition, or with such modifications as they choose to make. [*Amendment, approved March 28, 1874; Amendments 1873-4, 93; took effect from passage.*^(b)

1580. *New district, when not to share in school moneys.*

Sec. 1580. No new district formed by the subdivision of an old one is entitled to any share of the public moneys belonging to the old district until a school has been actually commenced in such new district.

1581. *Action creating new districts void in certain events.*

Sec. 1581. Unless within four months, after the making of an order creating a new district, school is opened therein, the order will cease to have effect.

1582. *New district, when to share in school moneys—Apportionment, how made.*

Sec. 1582. When a new district is formed by the division of an old one, the school superintendent must, after payment of debts, divide the money to the credit of the old district at the time a school was first opened in the new district, and such as may afterwards be apportioned to the old district, according to the number of children resident in each district, for which purpose he may order a census to be taken.

ARTICLE VI.

ELECTIONS FOR SCHOOL TRUSTEES.

1593. *Election of trustees, when and where.*

Sec. 1593. An election for school trustees must be held in each district, on the last Saturday of June of each year, at the district schoolhouse, if there is one; and if there is none, at a place to be designated by the board of trustees.

1. The number of school trustees for any school district except where city boards are otherwise authorized by law, shall be three;

2. In new school districts, or in case of a vacancy for any cause in an old one, the school trustees shall be elected to hold office for one, two, and three years respectively from the first Saturday of July next succeeding their election;

3. Except as provided in subdivision second of this section, one trustee shall be elected annually, to hold office for three years, or until his successor shall be elected and qualified. [*Amendment, approved March 13, 1874; Amendments 1873-4, 80; took effect from passage.*^(c)

1594. *Elections in new districts.*

Sec. 1594. Within thirty days after the formation of a new district an election must be held for trustees. Any three electors of the district may give notice of it in the same manner as notice is required to be given of the annual election.

1595. *Notices of election.*

Sec. 1595. Not less than ten days before the election required under section fifteen hundred and ninety-three, the trustees must post notices in three public places in the district, which notices must specify the time and place of election, and the hours during which the polls will be kept open; if within five days of

(a) Original section:

Sec. 1578. After giving notice to all parties interested, the school superintendent must transmit the petition to the board of supervisors, with his approval or disapproval, and a note of such changes in the boundaries as he may think advisable indorsed thereon.

(b) The original section had the words "same and establish the district" instead of "same. If the board establishes the district, they may do so."

(c) The original section did not have either of the three subdivisions, and had the word "April" instead of "June."

the election the trustees have failed to post the notices required under this section, then any three electors of the district may give notice of such election. [*Amendment, approved March 28, 1874; Amendments 1873-4, 93; took effect from passage.*^(a)]

1596. Judges and inspectors, how appointed.

SEC. 1596. The trustees must appoint the inspector and judges of election; if none are so appointed, or if they are not present at the time for opening the polls, the electors present may appoint them.

1597. Opening and closing polls.

SEC. 1597. In districts in which the number of children between five and fifteen years of age exceed five hundred, the polls must be opened at eight o'clock A. M. and kept open until sundown; in other districts the polls must not be opened before nine o'clock A. M., nor closed before twelve o'clock M., nor kept open less than one hour.

1598. Who may vote.

SEC. 1598. Every elector of the county who has resided in the district for thirty days next preceding the election may vote thereat.

1599. Voting must be by ballot.

SEC. 1599. The voting must be by ballot; provided, that the provisions of sections eleven hundred and eighty-seven and eleven hundred and ninety-one may be dispensed with. [*Amendment, approved March 28, 1874; Amendments 1873-4, 94; took effect from passage.*^(b)]

1600. Challenges.

SEC. 1600. Any person offering to vote may be challenged by any elector of the district, and the judges of election must thereupon administer to the person challenged an oath, in substance as follows: "You do swear that you are a citizen of the United States, that you are twenty-one years of age, that you have resided in this state six months next preceding this election, and in this school district thirty days, and that you have not before voted this day." If he takes the oath prescribed in this section his vote must be received, otherwise his vote must be rejected. [*Amendment, approved March 28, 1874; Amendments 1873-4, 94; took effect from passage.*^(c)]

1601. Poll lists.

SEC. 1601. A poll and tally list must be kept and returned to the board of trustees.

1602. Certificates of election.

SEC. 1602. The officers of election must, after counting the votes, make and deliver certificates of election to the persons elected, a copy of which, with the oath of office attached, must be forwarded to the county superintendent. [*Amendment, approved March 28, 1874; Amendments 1873-4, 94; took effect from passage.*^(d)]

ARTICLE VII.

BOARDS OF TRUSTEES OF SCHOOL DISTRICTS, AND CITY BOARDS OF EDUCATION.

1611. School district to be under control of three trustees.

SEC. 1611. Except when otherwise authorized by special statute, every school district shall be under the control of a board of school trustees, consisting of

(a) Original section:

SEC. 1595. Not less than five days before such election the trustees must post notices in three public places in the district, which notices must specify the time and place of election, and the hours during which the polls will be kept open.

(b) Original section:

SEC. 1599. The voting must be by ballot.

(c) The first section differed in the last sentence, which was as follows: "If he refuses to take the oath his vote must be rejected."

(d) The original section did not have the last clause commencing with the words "a copy of which."

three members. [*New section, approved March 28, 1874; Amendments 1873-4, 95; took effect from passage.*]

1612. *Trustees, election and terms of office.*

SEC. 1612. In school districts newly organized, or in case of vacancies for any cause in an old one, three school directors must be elected, to hold office for one, two and three years, respectively, from the first Saturday in July next succeeding their election. [*New section, approved March 28, 1874; Amendments 1873-4, 95; took effect from passage.*]

1613. *Term of office.*

SEC. 1613. The term of office of school trustees is three years from the first Saturday in July next succeeding their election.

1614. *Vacancies, how filled.*

SEC. 1614. Vacancies in office of school trustees must be filled until the next annual election by appointment made by the school superintendent, and then by election for the unexpired term.

1615. *Trustees of old hold over in new districts.*

SEC. 1615. When a new district is organized, such of the trustees of the old as reside in the new district are trustees of the latter.

1616. *Boards of education provided for by special statutes.*

SEC. 1616. Boards of education are elected in cities under the provisions of special statutes, and their powers and duties are as prescribed in such statutes, except as otherwise in this chapter provided.

1617. *General powers of boards of trustees and of education.*

SEC. 1617. The powers of boards of trustees of school districts, and of boards of education in cities, are as follows:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the state board of education, for their own government and the government of schools;
2. To manage and control the school property within their districts;
3. To purchase school furniture and apparatus, and such other things as may be necessary for the use of schools;
4. To rent, furnish, repair, and insure the school property of their respective districts;
5. When directed by a vote of their district, to build schoolhouses, or to purchase or sell school lots;
6. To make, in the name of the district, conveyances of all property belonging to the district and sold by them;
7. To employ the teachers, janitors, and employees of schools; to fix and order paid their compensation;
8. To suspend or expel pupils for misconduct;
9. To exclude from schools children under six years of age;
10. To enforce in schools the course of study and the use of the text-books prescribed and adopted by the state board of education;
11. To appoint district librarians, and enforce the rules prescribed for the government of district libraries;
12. To exclude from schools and school libraries all books, publications, or papers of a sectarian, partisan, or denominational character;
13. To furnish books for the children of parents unable to furnish them;
14. To keep a register, open to the inspection of the public, of all children applying for and entitled to be admitted in the schools, and to notify the parent or guardian of such children when vacancies occur, and receive such children in the schools in the order to which they are registered;

15. To make arrangements with the trustees of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school;

16. On or before the first day of June, in each year, to appoint a school census marshal, and notify the school superintendent thereof;

17. To make an annual report, on or before the first day of July, to the school superintendent, in the manner and form and on the blanks prescribed by the superintendent of public instruction;

18. To make a report, whenever required, directly to the superintendent of public instruction, of the text-books used in their schools;

19. To visit every school in their district, at least once in each term, and examine carefully into its management, condition, and wants; this clause to apply to each and every member of the board of trustees. [*Amendment, approved March 13, 1874; Amendments 1873-4, 81; took effect from passage.*^(a)]

[SEC. 1618^(b) was repealed by act approved, March 28, 1874; Amendments 1873-4, 111; took effect from passage.]

1619. *Must maintain all schools for equal length of time.*

SEC. 1619. The boards of trustees and boards of education must maintain all the schools established by them for an equal length of time during the year, and as far as practicable with equal rights and privileges.

1620. *Stationery, etc., to be furnished to pupils.*

SEC. 1620. Writing and drawing paper, pens, ink, and lead and slate pencils, for the use of the schools, must be furnished under the direction of boards of education and trustees, and charges therefor must be audited and paid as other claims against the school fund of their districts are audited and paid. [*Amendment, approved March 28, 1874; Amendments 1873-4, 95; took effect from passage.*^(c)]

1621. *School moneys, how used.*

SEC. 1621. The board of trustees and board of education must use the school moneys received from the state or county apportionment, exclusively, for the support of schools for that school year, until at least an eight months' school shall have been maintained; if at the end of any year there is an unexpended balance, it may be used for the payment of claims against the district outstanding, or it may be used for the year succeeding. [*Amendment, approved March 28, 1874; Amendments 1873-4, 95; took effect from passage.*^(d)]

1622. *Same.*

SEC. 1622. Boards of trustees may use the county school moneys for any of the purposes authorized by this chapter; but all state school moneys, except in those cities where it has otherwise been expressly provided by special law, must, except the ten per cent. reserved for district school library purposes, be used exclusively for the payment of teachers.

1623. *Liabilities of boards of trustees.*

SEC. 1623. Boards of trustees are liable as such, in the name of the district, for any judgment against the district for salary due any teacher on contract, and

(a) The original section did not have the nineteenth subdivision, and differed in the ninth, tenth, twelfth, seventeenth and eighteenth. The ninth commenced with the words, "In cities." The tenth after "enforce" had the words, "except in incorporated cities and towns." The twelfth did not have the words "partisan or denominational." The seventeenth and eighteenth did not have the words "of public instruction."

(b) Original section:

SEC. 1618. Boards of trustees and boards of education must organize schools into primary, grammar, and

high school departments, if there is sufficient means to maintain all three departments; and if not, then the several departments must be maintained in the order herein named.

(c) The original section down to and including the word "pencils" had only the words "stationery, pens, ink and pencils."

(d) The original section after "apportionment" had the words "during any school year." It had the word "but" instead of the words "until at least an eight months' school shall have been maintained."

for all debts contracted under the provisions of this chapter, and they must pay such judgment or liabilities out of the school moneys to the credit of such district; provided, that the contracts mentioned in this section are not in excess of the school moneys accruing to the district for the school year for which the contracts are made, otherwise the district shall not be held liable. [*Amendment, approved March 28, 1874; Amendments 1873-4, 95; took effect from passage.*^(a)]

1624. Liabilities of board for taxes, etc.

SEC. 1624. If any board of trustees or of education fail to appoint a census marshal at the proper time, and through such failure the district is omitted in the apportionment of school moneys, the trustees or members of the board of education are jointly and severally liable to the district for the full amount which the district would have received but for such failure, and the amount may be recovered in an action brought by any citizen of such district in the name of and for the benefit of the district.

ARTICLE VIII.

DISTRICT CENSUS MARSHALS.

1634. Duty of census marshal.

SEC. 1634. It is the duty of the census marshal:

1. To annually, in the month of June, take a census of all children in his district under seventeen years of age;
2. To report the result of his labors to the county superintendent (or to the board of education, in cities), before the first day of July, in each year;
3. He shall visit each habitation, house, residence, domicile or other place of abode in his district, and by actual observation and interrogation, enumerate the census children of the same. [*Amendment, approved March 28, 1874; Amendments 1873-4, 96; took effect from passage.*^(b)]

1635. Where district in two counties.

SEC. 1635. Whenever a district is formed, lying partly in two adjoining counties, the census marshal must report to each county superintendent the number of children in each county. [*Amendment, approved March 28, 1874; Amendments 1873-4, 96; took effect from passage.*^(c)]

1636. Report.

SEC. 1636. His report must be made under oath, upon blanks furnished by the superintendent of public instruction, and must show:

1. The number, age, sex, color, and nationality of children listed;
2. The names of the parents of such children;
3. Such other facts as the superintendent of public instruction may designate. [*Amendment, approved March 28, 1874; Amendments 1873-4, 96; took effect from passage.*^(a)]

1637. Children absent at school to be listed.

SEC. 1637. He must include in his report all children (whose parents or guardians are residents of the district) that are absent attending institutions of learning.

1638. Children of non-residents not to be included.

SEC. 1638. He must not include in his report children who are attending in-

(a) The original section did not have the proviso.
 (b) The original section did not have the third subdivision. In the first it had the word "fifteen" instead of "seventeen," and in the second it had the word "school" instead of "county."
 (c) The original section had the words "school superintendent" instead of "county superintendent, the number of children in each county."

(d) The original section had the words "school superintendent" instead of "superintendent of public instruction," where it first occurs. In the second subdivision after the word "parents" it had "or guardians." In the third subdivision it had the words "board of education" instead of "superintendent of public instruction."

stitutions of learning, or such benevolent institutions as deaf and dumb, blind and orphan asylums, in his district, but whose parents or guardian do not reside therein. [*Amendment, approved March 28, 1874; Amendments 1873-4, 97; took effect from passage.*^(a)]

1639. *Compensation of marshal.*

SEC. 1639. The compensation of census marshals must be audited and paid as other claims upon the school fund of the district are audited and paid.

1640. *Neglect or refusal of census marshal to report a misdemeanor.*

SEC. 1640. If the census marshal neglects or refuses to make his report at the time and in the manner herein required, or to perform any other duty devolved upon him, he must be deemed guilty of a misdemeanor, and on conviction, be punished by fine or imprisonment. [*New section, approved March 13, 1874; Amendments 1873-4, 85; took effect from passage.*]

ARTICLE IX.

CLERKS OF SCHOOL DISTRICTS.

1649. *When and how elected.*

SEC. 1649. Boards of trustees must annually, on the first Saturday of July, meet and elect one of their number clerk of the district.

1650. *General duties of.*

SEC. 1650. It is the duty of the clerk:

1. To act as clerk of the board, and keep a record of their proceedings;
2. To keep an account of the receipts and expenditures of school moneys;
3. To keep his records and accounts open to the inspection of the electors of the district;
4. To perform such other duties as may be prescribed by the board.

1651. *When to provide supplies, etc.*

SEC. 1651. The clerk of each district must, under the direction of the board of trustees, provide all school supplies authorized by this chapter, and keep the schoolhouse in repair during the time school is taught therein.

1652. *When to act as marshal, assessor, or collector.*

SEC. 1652. The clerk may act as assessor, or collector, or as both, of district taxes, in either of which cases he must be paid the same compensation which would have been allowed by the board to any other person.

ARTICLE X.

SCHOOLS.

1662. *Who may be admitted to.*

SEC. 1662. Every school, unless otherwise provided by special statute, must be open for the admission of all white children between five and twenty-one years of age residing in the district, and the board of trustees or board of education have power to admit adults and children not residing in the district, whenever good reasons exist therefor.

1663. *Schools to be graded.*

SEC. 1663. All schools, unless otherwise provided by special statute, must be divided in first, second, and third grade. Each county superintendent must, under instructions from the state board of education, determine the respective

(a) The original section did not have the words "or such benevolent institutions as deaf and dumb, blind and orphan asylums."

grade or class of schools in his county. [*Amendment, approved March 28, 1874; Amendments 1873-4, 97; took effect from passage.*^(a)]

1664. *To be taught in the English language.*

SEC. 1664. All schools must be taught in the English language.

1665. *Instruction, branches in.*

SEC. 1665. Instruction must be given in the following branches in the several grades in which each may be required, viz.: Reading, writing, orthography, arithmetic, geography, grammar, history of the United States, physiology, natural philosophy, natural history, elements of form, vocal music and industrial drawing. [*Amendment, approved March 28, 1874; Amendments 1873-4, 111; took effect from passage.*^(b)]

1666. *Other studies.*

SEC. 1666. Other studies may be authorized by the state board of education, or board of education of any city or city and county, but no such studies can be pursued to the neglect or exclusion of the studies in the preceding section specified.

1667. *Instruction in manners, etc.*

SEC. 1667. Instruction must be given in all grades of schools, and in all classes, during the entire school course, in manners and morals.

1668. *Physical exercise, etc.*

SEC. 1668. Attention must be given to such physical exercises for the pupils as may be conducive to health and vigor of body as well as mind, and to the ventilation and temperature of school-rooms.

1669. *Schools for Negro and Indian children.*

SEC. 1669. The education of children of African descent, and Indian children, must be provided for in separate schools; provided, that if the directors or trustees fail to provide such separate schools, then such children must be admitted into the schools for white children. [*Amendment, approved March 28, 1874; Amendments 1873-4, 97; took effect from passage.*^(c)]

1670. *How established.*

SEC. 1670. Upon the written application of the parents or guardians of such children to any board of trustees or board of education, a separate school must be established for the education of such children.

1671. *Governed by same rules as schools for whites.*

SEC. 1671. The same laws, rules, and regulations which apply to schools for white children apply to schools for colored children.

1672. *Sectarian books and teachings prohibited.*

SEC. 1672. No publication of a sectarian, partisan, or denominational character must be used or distributed in any school, or be made a part of any school library; nor must any sectarian or denominational doctrine be taught therein. Any school district, town, or city, the officers of which knowingly allow any schools to be taught in violation of these provisions, forfeits all right to any state or county apportionment of school moneys; and, upon satisfactory evidence of such violation, the superintendent of public instruction and school superintendent must withhold both state and county apportionments.

1673. *Duration of daily sessions.*

SEC. 1673. No school must be continued in session more than six hours a day; and no pupil under eight years of age must be kept in school more than

(a) The original section had the words "school superintendent" instead of "county superintendent."

(b) The original section did not have the words "elements of form."

(c) The original section did not have the proviso.

four hours per day. Any violation of the provisions of this section must be treated in the same manner as a violation of the provisions of the preceding section.

ARTICLE XI.

PUPILS.

1683. *Pupils, how admitted.*

SEC. 1683. Pupils must be admitted into the schools in the order in which they apply to be registered.

1684. *Must submit to regulations.*

SEC. 1684. All pupils must comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of such schools.

1685. *Suspension and expulsion of.*

SEC. 1685. Continued willful disobedience or open defiance of the authority of the teacher constitutes good cause for expulsion from school; and habitual profanity and vulgarity good cause for suspension from school.

1686. *Defacing school property, liability for.*

SEC. 1686. Any pupil who cuts, defaces, or otherwise injures any school-house, fences, or outbuildings thereof, is liable to suspension or expulsion, and, on the complaint of the teacher or trustees, the parents or guardians of such pupils shall be liable for all damages. [*Amendment, approved March 28, 1874; Amendments 1873-4, 112; took effect from passage.*^(a)]

1687. *Experienced teachers for beginners.*

SEC. 1687. In cities having graded schools beginners shall be taught, for the first two years, by teachers who have had at least four years' experience; and such teachers shall rank, in point of salary, with those of first grade.

An Act to enforce the educational rights of children.

Approved March 28, 1874; 1873-4, 751.

Children to be sent to school.

SECTION 1. Every parent, guardian, or other person in the State of California having control and charge of any child or children between the ages of eight and fourteen years, shall be required to send any such child or children to a public school for a period of at least two thirds of the time during which a public school shall be taught in each city, or city and county, or school district, in each school year, commencing on the first day of July, in the year of our Lord one thousand eight hundred and seventy-four, at least twelve weeks of which shall be consecutive, unless such child or children are excused from such attendance by the board of education of the city or city and county, or of the trustees of the school district in which such parents, guardians, or other persons reside, upon its being shown to their satisfaction that his or her bodily or mental condition has been such as to prevent attendance at school, or application to study for the period required, or that the parents or guardians are extremely poor or sick, or that such child or children are taught in a private school, or at home, in such branches as are usually taught in the primary schools of this state, or have already acquired a good knowledge of such branches; provided, in case a public school shall not be taught for three months during the year, within one mile by the nearest traveled road, of the residence of any person within the school district, he shall not be liable to the provisions of this act.

Notice of law.

SEC. 2. It shall be the duty of the president of each board of education, and

(a) The original section did not have the last clause commencing with the words "and, on the complaint."

of the clerk of each board of district trustees in the State of California, to cause to be posted three notices of this law in the most public places in the city, or city and county, or in the school district, or published in one newspaper therein for three weeks, in the month of June, in each year, the expense of each publication to be paid out of the school funds of such city, or city and county, or school district, as the case may require.

Misdemeanor.

SEC. 3. In case any parent, guardian, or other person shall fail to comply with the provisions of this act, said parent, guardian, or other person shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not more than twenty dollars; and for the second and each subsequent offense the fine shall not be less than twenty dollars nor more than fifty dollars; and the parent, guardian, or other person so convicted, shall pay all costs. Each such fine shall be paid to the clerk of the proper board of education, or of the district trustees.

Prosecutions.

SEC. 4. And it shall be the duty of the clerk of each board of education and of each board of district trustees, on complaint of any teacher or taxpayer, to prosecute all offenses occurring under the provisions of this act; and any clerk neglecting to prosecute such offense within ten days after a written notice has been served on him by any teacher or taxpayer within the limits of the authority of said board, unless the person so complained of shall be excused by the proper school board, shall himself be liable to a fine of not less than twenty dollars nor more than fifty dollars, which fine shall be prosecuted for in the name of the people of the State of California, and the fine so collected shall be paid over to the clerk of the board of education or trustees of the proper city, or city and county, or school district, to be accounted for as in section three of this act; and in case such prosecution fail, the expenses thereof shall be paid out of the school fund of the city, or city and county, or school district, in which the case arose.

Lists and reports.

SEC. 5. And it shall be the duty of the census marshal to furnish each board of education and of district trustees, with a complete list of all children living within the jurisdiction of said board, and to note on such lists all children not attending colleges, college schools, private schools, or being taught at home, who are liable to the provisions of this act; and each teacher teaching within the limits of the jurisdiction of such board, shall be supplied with a list of all children within his or her department or school, and shall call such list each morning on the opening of school, and note the absentees, and the reason of such absence, if any, and at the close of each term of twelve weeks, shall make a full report to the board of education, or of district trustees, of all such cases of absence, with the names both of children and parents, guardians, or other persons having such children in charge, and said board shall thereupon forthwith proceed to prosecute such parents, guardians, or other persons, according to the provisions of this act.

Deaf, dumb, and blind.

SEC. 6. And whereas, the state has provided an institution for the gratuitous instruction of all resident deaf and dumb or blind children between the ages of six and twenty-one years, every parent or guardian of any child or children afflicted with deafness or blindness, shall be required, under the penalties hereinbefore specified, to send such child or children to said institution for a period of not less than five years, unless such child or children shall have been excused by the authorities, and on the grounds specified in section one of this act.

Jurisdiction.

SEC. 7. Any justice of the peace of the proper city, or city and county, or school district, shall have jurisdiction of all offenses committed under the provisions of this act.

SEC. 8. This act shall be in force and effect from and after the first day of July, eighteen hundred and seventy-four.

ARTICLE XII.

TEACHERS.

1696. *General duties of teachers.*

SEC. 1696. Every teacher in the public schools must:

1. Before assuming charge of a school, file his certificate with the county superintendent;

2. On taking charge of a school, or on closing a term of school, immediately notify the county superintendent of such fact;

3. Enforce the course of study, the use of text-books, and the rules and regulations prescribed for schools;

4. Hold pupils to strict account for disorderly conduct on the way to and from school, on the play-grounds, or during recess; suspend for good cause any pupil in the school, and report such suspension to the board of trustees or education for review. If such action is not sustained by them the teacher may appeal to the county superintendent, whose decision shall be final;

5. Keep a state school register;

6. Make an annual report to the county superintendent at the time, and in the manner, and on the blanks prescribed by the superintendent of public instruction. Any school teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close of such term; and any teacher who may be teaching any school at the end of the school year, shall, in his or her annual report, include all statistics for the entire school year, notwithstanding any previous report for a part of the year;

7. Make such other reports as may be required by the superintendent of public instruction, county superintendent, or board of trustees or education. [*Amendment, approved March 28, 1874; Amendments 1873-4, 98; took effect from passage.*^(a)]

1697. *School month in relation to salary of teachers defined.*

SEC. 1697. A school month is construed and taken to be twenty school days, or four weeks of five school days each.

1693. *Appeal allowed from order removing teacher for incompetency.*

SEC. 1698. In case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees, for alleged unfitness or incompetence or violation of rules, the teacher may appeal to the school superintendent, and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated.

1699. *Appeals in other cases.*

SEC. 1699. Any teacher whose salary is withheld may appeal to the superintendent of public instruction.

(a) The original section did not have either the first or second subdivision, and the others were numbered from one to five inclusive. The first subdivision did not have the word "text." The second did not have the last sentence commencing, "by such action." The

fourth did not have the word "public," nor the last sentence commencing, "any school teacher." The fifth did not have the words "superintendent of public instruction, county."

1700. *No warrant to be drawn in favor of teacher, unless he performs his duty.*

SEC. 1700. No warrant must be drawn in favor of any teacher, unless the officer whose duty it is to draw such warrant is satisfied that the teacher has faithfully performed all the duties prescribed in section sixteen hundred and ninety-six. [*Amendment, approved March 28, 1874; Amendments 1873-4, 99; took effect from passage.* ^(a)]

1701. *Nor unless he hold certificate, and was employed.*

SEC. 1701. No warrant must be drawn in favor of any teacher, unless such teacher is the holder of a proper certificate, in force for the full time for which the warrant is drawn, nor unless he was employed by the board of trustees or education; provided, that nothing in this section shall interfere with any special school laws now in existence for the counties of Trinity, Shasta, or Inyo. [*Amendment, approved March 28, 1874; Amendments 1873-4, 99; took effect from passage.* ^(b)]

1702. *Duties of teachers as to instructions.*

SEC. 1702. It shall be the duty of all teachers to endeavor to impress on the minds of the pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship. [*New section, approved March 28, 1874; Amendments 1873-4, 99; took effect from passage.*]

An Act concerning the employment of teachers in the public schools in the counties of Trinity and Shasta.

Approved March 18, 1874; 1873-4, 472.

Qualifications of teachers.

SECTION 1. The board of trustees of any of the public schools in the counties of Trinity and Shasta, where there are less than twenty-one school children in the school district, are hereby authorized to employ any suitable person to teach in their districts, not having the legal certificate of a teacher, whenever a majority of the parents or guardians of children in their districts shall so petition. [*Amendment, approved March 3, 1876; 1875-6, 122; took effect sixtieth day after passage.*]

Official duties not to be invalidated.

SEC. 2. The employment of such teachers in any districts in said counties shall not operate to prevent the apportionment thereto of any state or county moneys which would otherwise be so apportioned; and the superintendents of public schools, and the county treasurers of said counties, are hereby directed, in their respective duties, to apportion moneys, draw warrants, pay the same, and do all other acts that they, in their official capacities, would be required to do if said schools had teachers holding legal certificates. [*Amendment, approved March 3, 1876; 1875-6, 122; took effect sixtieth day after passage.*]

SEC. 3. All acts or parts of acts, so far as they conflict with this act, are hereby repealed, and this act shall take effect and be in force from and after its passage. [*Amendment, approved March 3, 1876; 1875-6, 122; took effect sixtieth day after passage.*]

An Act concerning the employment of teachers in Inyo and Mono counties.

Approved March 20, 1874; 1873-4, 509.

Teachers without certificates.

SECTION 1. The board of trustees of any school district in the counties of Inyo

(a) The original section had the words "his duties" instead of "all the duties prescribed in section 1696." (b) The original section did not have the words "for the full time for which the warrant is drawn," nor the proviso.

and Mono shall have power to employ a teacher or teachers not holding the requisite legal certificate, whenever a majority of the parents and guardians of children attending such school shall so petition, and whenever the services of satisfactory applicants holding such certificates cannot be obtained.

School moneys.

SEC. 2. The employment of such teachers in any district in said counties, shall not operate to prevent the apportionment thereto of any state or county moneys which would otherwise be so apportioned.

SEC. 3. This act shall take effect from and after its passage.

An Act to prevent discrimination against female teachers.

Approved, March 30, 1874; 1873-4, 938.

Female teachers to receive same compensation as males.

SECTION 1. Females employed as teachers in the public schools of this state shall in all cases receive the same compensation as is allowed male teachers for like services when holding the same grade certificates.

SEC. 2. This act shall take effect and be in force from and after its passage.

ARTICLE XIII.

DISTRICT LIBRARIES.

1712. *Library fund, how expended.*

SEC. 1712. The boards of trustees and of education must expend the library fund, together with such moneys as may be added thereto by donation, in the purchase of school apparatus and books for a school library. [*Amendment, approved March 28, 1874; Amendments 1873-4, 99; took effect from passage.*]

1713. *Of what fund consists.*

SEC. 1713. Except in cities not divided into school districts, the library fund consists of ten per cent. of the state school fund annually apportioned to the district, unless ten per cent. exceeds fifty dollars, in which event it consists of fifty dollars annually taken from the fund so apportioned.

1714. *Same.*

SEC. 1714. In cities not divided into school districts the library fund consists of the sum of fifty dollars for every five hundred children between the ages of five and fifteen years, annually taken from the state school fund apportioned to the city.

1715. *Control and location of library.*

SEC. 1715. Libraries are under the control of the board of trustees or education, and must be kept when practicable in the schoolhouses.

1716. *Who may use.*

SEC. 1716. The library is free to all pupils of a suitable age belonging to the school, and any resident of the district may become entitled to its privileges by the payment of such a sum of money for life membership or such annual or monthly fee as may be prescribed by the trustees.

1717. *Trustees, power and responsibility as to libraries.*

SEC. 1717. The trustees shall be held accountable for the proper care and preservation of the library, and shall have power to assess and collect all fines, penalties, and fees of membership, and to make all needful rules and regulations not provided for by the state board of education, and not inconsistent therewith, and they shall report annually to the county superintendent, all library statistics which may be required by the blanks furnished for the purpose by the superintendent of public instruction. [*New section, approved March 28, 1874; Amendments 1873-4, 100; took effect from passage.*]

ARTICLE XIV.

EDUCATIONAL JOURNAL.

1726. [SECS. 1726, 1727, 1728, 1729, 1730, and 1731^(a) were repealed by act approved April 1, 1876; Amendments 1875-6, 27; took effect from passage.]

ARTICLE XV.

STATE BOARD OF EXAMINATION.

1741. *How composed.*

SEC. 1741. The state board of examination consists of the superintendent of public instruction and four teachers holding state educational diplomas appointed by him.

1742. *Chairman.*

SEC. 1742. The superintendent of public instruction is chairman of the board.

1743. *Meetings.*

SEC. 1743. The board must meet at such times and places as the chairman directs, and must hold at least two sessions in each year.

1744. *General powers of board of examination.*

SEC. 1744. The board has power to grant:

1. Recommendations for life diplomas;
2. State educational diplomas, valid for six years;
3. State certificates of the first grade, valid for four years;
4. Certificates of the second grade, valid for three years;
5. State certificates of the third grade, valid for two years, to be granted only to females;

6. To review on appeal an order revoking a county or city certificate. [*Amendment, approved March 28, 1874; Amendments 1873-4, 100; took effect from passage.*^(b)]

1745. *Limitations on power to issue life diplomas.*

SEC. 1745. The life diploma must be issued to such persons only as have been engaged for ten years in teaching, and who have received the educational diploma, or who after receiving such educational diploma have held for one year the office of state, city, or school superintendent.

1746. *Limitation as to educational diplomas.*

SEC. 1746. State educational diplomas must be issued to such persons only as have been employed in teaching for five years, and who have held a first-grade state certificate for at least a year. [*Amendment, approved March 28, 1874; Amendments 1873-4, 100; took effect from passage.*^(c)]

1747. *Applications for life diplomas.*

SEC. 1747. Applicants for life diplomas must file with the state board of edu-

(a) The repealed sections were as follows:

SEC. 1726. Some journal published in this state, and devoted exclusively to educational purposes, must be designated by the state board of education as the "State Educational Journal."

SEC. 1727. The superintendent of public instruction must be one of the editors of the journal.

SEC. 1728. It must contain a department devoted to the publication of the monthly reports of the state normal school; the decisions and apportionments made; and the instructions and circulars issued by the state board of education or the superintendent of public instruction.

SEC. 1729. The superintendent of public instruction must annually subscribe for a sufficient number of copies of such journal to supply each school superintendent, city superintendent, clerk of the district, and district school library with one copy thereof.

SEC. 1730. The price paid for each annual subscrip-

tion of twelve monthly copies must not exceed one dollar and fifty cents; and the state board of education has power to reduce the rate whenever the journal can be creditably sustained at a lower rate.

SEC. 1731. At the beginning of each school year the superintendent of public instruction must draw his order in favor of such journal on the state controller for an amount sufficient to pay for such subscriptions, which order must be certified by the state board of education and allowed by the state board of examiners, whereupon the state controller must draw a warrant thereon on the state treasurer, payable out of any unapportioned school moneys in the treasury.

(b) The original section did not have the words "Recommendations for" in the first subdivision; "state" in the third, or "to be granted only to females."

(c) The original section did not have the last clause commencing with the words "and who have."

cation certificates of their success in teaching; and the board, after examination, must present the application to the state board of education, with its recommendation. [*Amendment, approved March 28, 1874; Amendments 1873-4, 101; took effect from passage.*^(a)]

1748. Examination of applicants for diplomas and certificates.

SEC. 1748. Every applicant for a state certificate shall be examined by written and oral questions in algebra, geography, history of the United States, constitution of the United States and California, physiology, natural philosophy, natural history, orthography, defining, penmanship, reading, method of teaching, vocal music, drawing, and school law of California. [*Amendment, approved March 28, 1874; Amendments 1873-4, 101; took effect from passage.*^(b)]

1749. Standing to be indorsed on certificates.

SEC. 1749. The standing in each study must be indorsed upon the educational diploma or certificate, or otherwise it is not a valid certificate. [*Amendment, approved March 28, 1874; Amendments 1873-4, 101; took effect from passage.*^(c)]

1750. Certificates may be issued without examination, when.

SEC. 1750. Normal school diplomas, from any state normal school in the United States, and life diplomas by the state board of examination or education, in any of the United States, must be recognized by this state as primary evidence of fitness for teaching; and the board may, on application of the holders thereof, issue, without examination, state certificates, and fix the grade thereof. [*Amendment, approved March 28, 1874; Amendments 1873-4, 101; took effect from passage.*^(d)]

1751. State certificates on examinations before county boards.

SEC. 1751. The board may grant state certificates to those who, in examination before county boards, have attained the standard of proficiency prescribed by the state board of education; provided, that the original examination papers be forwarded to the state board of examination within fifteen days after the close of the examination. [*Amendment, approved March 28, 1874; Amendments 1873-4, 102; took effect from passage.*^(e)]

1752. Revocation of diplomas or certificates.

SEC. 1752. The board may, for immoral or unprofessional conduct, profanity, intemperance or evident unfitness for teaching, revoke any educational diploma or certificate granted by it. [*Amendment, approved March 28, 1874; Amendments 1873-4, 102; took effect from passage.*^(f)]

1753. Renewal of.

SEC. 1753. The board may, at the expiration of the time for which they are granted, renew diplomas or certificates for a like period for which they were originally granted. [*Amendment, approved January 20, 1876; Amendments 1875-6, 28; took effect immediately.*^(g)]

(a) The original section had the following additional sentence:

"The state board of education may recognize the life diplomas of other states of the United States, and issue to the holders thereof life diplomas of this state."

(b) Original section:

SEC. 1748. Every applicant for an educational diploma, or for a state certificate of the first or second grade, must be examined by written or printed and oral questions, in algebra, arithmetic, grammar, composition, geography, history of the United States, physiology, natural philosophy, natural history, orthography, defining, penmanship, reading, method of teaching, and vocal music and drawing.

(c) The original section had the words "in the class and" after the word "standing."

(d) The original section did not have the words "or education." Before the words "this state" it had the words "the state board of examination of."

It also had the following additional sentence after "grade thereof:"

"When any applicant presents to the state board of examination certificates or other evidence of a public nature conclusive of his fitness to teach all the branches of the higher grades, the board may, by a unanimous vote, grant to such applicant a first grade certificate."

(e) The original section had the words "without examination" after the words "the board may;" but it did not have the proviso.

(f) The original section did not have the words "profanity, intemperance," "evident" or "granted by it."

(g) The original section was the same as the amendment in the text.

It was previously amended by act of March 28, 1874 (Amendments 1873-4, 102), so as to add the words "except of the third grade" after the word "certificates."

1754. Eligibility to teach of holders of diplomas.

SEC. 1754. The holders of diplomas are eligible to teach in any public school, except in high schools in which languages other than the English are required to be taught by such teachers.

1755. Same of holders of certificates.

SEC. 1755. Holders of state certificates are eligible to teach as follows:

1. Those of the first grade, in grammar schools;
2. Those of the second, in second grade schools, and as assistants in grammar schools, except first and second grades;
3. Those of the third, in primary schools.

1756. [SEC. 1756, ^(a) was repealed by act approved March 13, 1874; Amendments 1873-4, 84; took effect from passage.]

1757. Fees from persons receiving life diplomas.

SEC. 1757. Every person receiving a life diploma must pay to the board three dollars, to defray the expense of issuing such diploma.

1758. Compensation of members of the board.

SEC. 1758. Each of the appointed members of the board shall receive an annual salary of two hundred dollars, payable out of the general fund on the warrant of the state controller, indorsed by the superintendent of public instruction.

ARTICLE XVI.

COUNTY BOARDS OF EXAMINATION.

1768. Board, how composed.

SEC. 1768. Each county board of examination is composed of the county school superintendent of such county, except as provided in section seventeen hundred and sixty-nine, and not less than three teachers who follow the profession of teaching at the time they are chosen, and holding a certificate of fitness for teaching, not less than a first grade county certificate, appointed by the county school superintendent. [Amendment, approved February 14, 1876; Amendments 1875-6, 28; took effect from passage. ^(b)

1769. Chairman.

SEC. 1769. When the county school superintendent is the holder of a certificate equal to a first grade county certificate, in full force and effect, he shall be the chairman of the county board of examination; and in case the county superintendent is not the holder of a certificate equal to a first grade county certificate, in full force and effect, the county superintendent of the county shall designate and appoint the principal of the school having the greatest number of pupils therein, as the chairman of said board of examination, to serve as such chairman not more than one year and not less than one term of said board, in the discretion of such superintendent. [Amendment, approved February 14, 1876; Amendments 1875-6, 28; took effect from passage. ^(c)

1770. Meetings.

SEC. 1770. The county board must meet and hold examinations as follows: Commencing on the first Wednesday in the months of December, March, June,

(a) Repealed section:

SEC. 1756. Every applicant for a state diploma or certificate must pay a fee of two dollars, and the amount collected must be applied to the support of the state educational journal.

(b) Original section:

SEC. 1768. Each county board of examination is com-

posed of the school superintendent of such county and not less than three teachers (holding not less than a first grade county certificate, if there are so many in the county) appointed by him.

(c) Original section:

SEC. 1769. The school superintendent is chairman of the board.

and September. The place of meeting must be designated by the chairman. [*Amendment, approved March 28, 1874; Amendments 1873-4, 102; took effect from passage.*^(a)]

1771. Power to grant certificates.

SEC. 1771. The county board of examination has power to grant certificates of three grades:

1. County certificates, first grade, valid for three years, and authorizing the holder to teach a grammar school, or a school of the first grade in the county.

2. County certificates, second grade, valid for two years, and authorizing the holder to teach a second grade school in the county.

3. County certificates of the third grade, valid for one year, and authorizing the holder to teach a third grade [school] in the county.

4. Third grade certificates are granted only to females.

5. The board may also grant to the holders of certificates granted by the boards of examination of the various counties of this state, certificates of like grade and standing as those held by such applicants without examination. [*Amendment, approved April 1, 1876; Amendments 1875-6, 29; took effect sixtieth day after passage.*^(b)]

1772. Certificates, to whom to be issued.

SEC. 1772. Certificates must be granted only to those who have passed a satisfactory examination in all the studies required for a state certificate of corresponding grade, and upon the questions prepared by the state board of examination, and reached the percentage prescribed by the state board of education; provided, that applicants for second grade county certificates shall be required to pass an examination only in arithmetic, grammar, geography, composition, history of the United States, orthography, defining, penmanship, reading, and method of teaching; and provided further, that applicants for third grade county certificates shall be required to pass an examination only in arithmetic, grammar, geography, orthography, defining, reading, and method of teaching. [*Amendment, approved February 14, 1876; Amendments 1875-6, 28; took effect from passage.*^(c)]

1773. Examinations, how to be conducted.

SEC. 1773. All examinations must be conducted partly in writing and in part orally. [*Amendment, approved March 28, 1874; Amendments 1873-4, 103; took effect from passage.*^(d)]

1774. Standing to be indorsed on certificate.

SEC. 1774. The standing of each applicant in each study and in the class must be indorsed on the back of each certificate, otherwise it is not a valid certificate.

1775. Renewal and revocation of certificates.

SEC. 1775. The board may, without examination, renew second grade county certificates upon the application of the persons who have held them for two years, and also third grade county certificates upon the application of the persons who have held them for one year, to remain in full force and effect so long as such

(a) The original section had the words "and at such other times as the chairman may direct" after the word "September."

(b) The original section did not have the fifth subdivision.

(c) Original section:

SEC. 1772. Certificates of the first grade must (except as in this article otherwise provided) be granted to those only who have passed a satisfactory examination in orthography, defining, reading, penmanship, physiology, natural philosophy, composition, arithmetic, algebra, geography, grammar, history of the United States, natural history, industrial drawing, and the method of teaching. Certificates of second grade must

be issued to those only who have passed a satisfactory examination in all of the above subjects except natural philosophy and algebra.

It was previously amended by act of March 28, 1874; Amendments 1873-4, 102, so as to read as follows:

SEC. 1772. Certificates must be granted to those only who have passed a satisfactory examination in all the studies required for a state certificate of corresponding grade, and upon the questions prepared by the state board of examination, and reached the percentage prescribed by the state board of education.

(d) The original section had the words "in the above-named studies" after "examinations."

persons follow the occupation of teachers, provided that the board may revoke any county certificate for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching. [*Amendment, approved February 14, 1876; Amendments 1875-6, 28; took effect from passage.*^(a)]

[SEC. 1776^(b) was repealed by act approved March 28, 1874; Amendments 1873-4, 111; took effect from passage.]

1777. *Compensation of board.*

SEC. 1777. Members must receive for their services a sum not exceeding three dollars per day, in addition to actual traveling expenses, for each quarterly session of the board, payable out of the unapportioned county school fund, on the warrant of the county superintendent. [*Amendment, approved March 28, 1874; Amendments 1873-4, 111; took effect from passage.*^(c)]

ARTICLE XVII.

CITY BOARDS OF EXAMINATION.

1787. *Must be a board in each city.*

SEC. 1787. In every city or city and county having a board of education there must be a board of examination.

1788. *How constituted.*

SEC. 1788. Each board of examination consists of the city and county superintendents of schools and of four teachers resident of such city and holders of state diplomas, elected by the board of education and holding office for two years.

1789. *Chairman.*

SEC. 1789. The school superintendent of the city is chairman of the city board of examination.

1790. *Meetings.*

SEC. 1790. The board must meet and hold examinations as follows: Commencing on the first Wednesday in the months of December, March, June, and September. The place of meeting must be designated by the chairman. [*Amendment, approved March 28, 1874; Amendments 1873-4, 103; took effect from passage.*^(d)]

1791. *General powers.*

SEC. 1791. The board has power to grant:

1. Certificates of the same grade and for the same time as the state board of examination has power to grant;
2. High school certificates, valid for six years;
3. Special certificates of the first grade, valid for four years, upon such special studies as may be authorized by the state board of education or board of education in any city, or city and county;
4. High school and special certificates must be granted upon such examinations as may be authorized by the state board of education, or board of education of any city, or city and county. All other certificates must be granted

(a) The original section was like the following amendment except that it did not have the words "profanity, intemperance or evident," and had the words "the profession of" before "teaching."

It was previously amended by act of March 28, 1874; Amendments 1875-6, 29, so as to read as follows:

SEC. 1775. The board may, without examination, renew certificates, and may revoke any county certificate for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching.

(b) Repealed section:

SEC. 1776. The board may without examination grant

to a graduate of any normal school, a first or second grade county certificate.

(c) The original section had the following additional sentence:

"When a board holds sessions at other times no compensation is allowed from the county; but the board may charge an examination fee not exceeding two dollars for each applicant."

(d) Original section:

SEC. 1790. The board must meet at such times and places as the chairman may direct.

upon examinations in all the studies required for a state certificate of corresponding grade, and upon questions prepared by the state board of examination, and upon the percentage prescribed by the state board of education. [*Amendment, approved March 28, 1874; Amendments 1873-4, 104; took effect from passage.*^(a)

1792. *When certificates may be granted or revoked.*

SEC. 1792. The board may without examination grant certificates of like grade to holders of certificates granted in other cities, and renew all certificates granted by it, and revoke any certificate for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching. [*Amendment, approved January 20, 1876; Amendments 1875-6, 30; took effect immediately.*^(b)

1793. *Eligibility to teach of holders of city certificates.*

SEC. 1793. The holders of city certificates are eligible to teach in the cities in which such certificates were granted, in schools of grades corresponding to the grade of such certificates.

1794. *Compensation allowed.*

SEC. 1794. The teachers, members of the board, may receive such compensation as may be allowed by the board of education, payable out of the city school fund.

ARTICLE XVIII.

COUNTY SCHOOL TAX.

1817. *County superintendent to furnish supervisors and auditor annually statement of amount of funds required.*

SEC. 1817. The county superintendent in each county, except in the city and county of San Francisco, must, on or before the first regular meeting of the board of supervisors, in September in each year, furnish the board of supervisors and the auditor, respectively, an estimate in writing of the minimum amount of county school funds needed for the ensuing year. This amount he must compute as follows:

1. He must ascertain, in the manner provided for in subdivisions one and two of section one thousand eight hundred and fifty-eight, the total number of teachers for the county;

2. He must calculate the amount required to be raised, at five hundred dollars per teacher; from this amount he must deduct the total amount of state apportionments, less ten per cent., received by the county for the next preceding school year, and the remainder shall be the minimum amount of county school fund needed for the ensuing year; provided, that if this amount is less than sufficient to raise a sum equal to three dollars for each census child in the county, then the minimum amount shall be such a sum as will be equal to three dollars for each census child in the county. [*New section, approved March 28, 1874; Amendments 1873-4, 105; took effect from passage.*

1818. *Levy of county tax.*

SEC. 1818. The board of supervisors, except of the city and county of San Francisco, of each county, must, annually, at the time of levying other county taxes, levy a tax to be known as the county school tax, the maximum rate of which must not exceed fifty cents on each one hundred dollars of taxable property in the county, nor the minimum rate be less than sufficient to raise the minimum amount reported by the county superintendent, in accordance with

(a) The original section did not have either the third or fourth subdivision.

(b) The original section did not have the last clause commencing with the words "and revoke any certificate."

It was previously amended by act of March 28, 1874; Amendments 1873-4, 104, so as to read like the amendment in the text, except that it also had the words "except of the third grade" after the words "all certificates."

the provisions of the preceding section. The supervisors must determine the minimum rate of the county school tax as follows:

1. They must deduct fifteen per cent. from the equalized value of the last general assessment roll, and the amount required to be raised, divided by the remainder of the assessment roll, is the rate to be levied; but if any fraction of a cent occurs, it must be taken as a full cent on each hundred dollars. [*Amendment, approved March 28, 1874; Amendments 1873-4, 105; took effect from passage.*^(a)]

1819. *Duty of auditor if supervisors fail to make levy.*

SEC. 1819. If the supervisors fail to levy the tax as herein provided, then the auditor must, and add it to the assessment-roll.

1820. *Proceeds of tax to be paid into the county school fund.*

SEC. 1820. All moneys derived from this tax in each county must be paid into the treasury thereof to the credit of the school fund.

ARTICLE XIX.

DISTRICT SCHOOL TAX.

1830. *Elections to determine.*

SEC. 1830. The board of trustees of any district may, when in their judgment it is advisable, call an election and submit to the electors of the district the question whether a tax shall be raised to furnish additional school facilities for the district, or to maintain any school in such district, or for building one or more schoolhouses, or for any two or all of these purposes.

1831. *Notice of election.*

SEC. 1831. Such election must be called by posting notices in three of the most public places in the district, for twenty days; and, also, if there is a newspaper in the county, by advertisement therein once a week for three weeks.

1832. *What notice to contain.*

SEC. 1832. Such notices must specify the time and place of holding the election, the amount of money proposed to be raised, and the purpose for which it is intended to be used.

1833. *Judges of, how appointed.*

SEC. 1833. The trustees must appoint three judges to conduct the election, and it must be held in all respects, as nearly as practicable, in conformity with the general election law.

1834. *Ballots, what to contain.*

SEC. 1834. At such elections the ballots must contain the words: "Tax—Yes," or "Tax—No," and also the name of one person as assessor and one as collector, and the same person may be elected to both offices.^(b)

1835. *Returns.*

SEC. 1835. If a majority of the votes cast are "Tax—Yes," the officers of the election must certify the fact to the trustees, and also certify the names of the persons having the plurality of votes for assessor and collector.

1836. *Certificates of election.*

SEC. 1836. The trustees must issue certificates of election.

^(a) The original section had the words "thirty-five cents" instead of "fifty cents," and after the words "less than sufficient to raise," it proceeded as follows: "A sum equal to three dollars for each child in the county between five and fifteen years of age. The supervisors must determine the minimum rate of the county school tax as follows:

"1. They must ascertain the number of children en-

titled to school apportionment, as shown by the next preceding school census, and then calculate the amount required to be raised, at three dollars per child."

It had a second subdivision similar to the first in the amendment above inserted.

^(b) An act of March 18, 1874; 1873-4, 446, provided for the election of a district assessor and district collector for Ukiah school district, Mendocino County.

1837. Duties of assessor.

SEC. 1837. The assessor on receiving his certificate of election must forthwith assess in the manner provided for county assessors, all the taxable persons and property in the district, and within thirty days return his roll, footed up, to the trustees.

1838. Tar, how levied.

SEC. 1838. The trustees, upon receiving the roll, must deduct fifteen per cent. therefrom for anticipated delinquencies, and then by dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained (using the full cent on each hundred dollars in place of any fraction) is hereby levied and assessed to, on or against the persons or property named or described in the roll, and is a lien on all such property until the tax is paid; and the tax, if not paid within the time limited by the next succeeding section for its payment, shall be delinquent, and must be collected in the manner prescribed in sections eighteen hundred and forty-five, eighteen hundred and forty-six, eighteen hundred and forty-seven, eighteen hundred and forty-eight, eighteen hundred and forty-nine, eighteen hundred and fifty, eighteen hundred and fifty-one, and eighteen hundred and fifty-two of this code. [*Amendment, approved March 28, 1874; Amendments 1873-4, 106; took effect from passage.*^(a)]

1839. Maximum rate of.

SEC. 1839. The maximum rate of tax levied by a district tax in any one year for building purposes must not exceed seventy cents on each hundred dollars, and the maximum rate levied for other school purposes must not exceed thirty cents on each hundred dollars in any one year.

1840. Equalization of.

SEC. 1840. The trustees upon receiving the assessment roll from the assessor must give five days' notice thereof by posting a notice in three public places in the district, and sit for at least three days as a board of equalization at such time and place as has been named in such posted notices, and they have the same power as county boards of equalization to make any changes in the assessment-roll.

1841. Collection of.

SEC. 1841. As soon as the rate of taxation has been determined, as provided in the preceding section, the trustees must place the tax list in the hands of the collector, who must then proceed to collect the tax, and within sixty days return the roll to the trustees, with the word "paid" marked opposite the name of each person or description of property from whom or on which he has received the tax; and he must also at the same time file with the trustees the county treasurer's receipt for all the moneys by him collected; and the persons and property on the roll not by the collector marked "paid" are delinquent.

1842. Vacancy in office of assessor or collector.

SEC. 1842. In case any assessor or collector of district taxes refuses or neglects to qualify, within ten days after his election or appointment, or having qualified, refuses or neglects to act, or in case of any vacancy from any other cause in either or both of said offices, the board of trustees must call a special election, giving at least five days' notice to fill such vacancy. [*Amendment, approved March 28, 1874; Amendments 1873-4, 112; took effect from passage.*^(b)]

(a) The original section did not have the words "shall be delinquent and." Instead of the last clause commencing with the words "and must be collected in the manner" it had the words "and must be collected in the same manner as delinquent state and county taxes."

(b) The original section instead of the words com-

mencing with "board of trustees must call a special election," etc., had the words "board of trustees must appoint some proper person to fill the place."

It was amended by act approved March 13, 1874; Amendments 1873-4, 82, so as to read like the amendment in the text, except that it required "at least ten days' notice" instead of "at least five days' notice."

1843. Compensation of assessor and collector.

SEC. 1843. The compensation of the assessor and collector must be fixed by the board of trustees, and paid out of the money collected.

1844. Bond of collector.

SEC. 1844. The collector must execute an official bond in an amount to be fixed by the board of trustees.

[SECS. 1845, 1846, 1847, and 1848, as originally passed,^(a) were repealed by act approved March 13, 1874; Amendments 1873-4, 84; took effect from passage; and afterward the following new sections were substituted in their place:]

1845. Delinquent tax list.

SEC. 1845. When any school tax shall have become delinquent, the delinquent tax list, duly certified by the district tax collector of the school district in which the school tax has become delinquent, shall be delivered to the district attorney of the county in which the district is situated. [New (substituted) section, approved March 28, 1874; Amendments 1873-4, 106; took effect from passage.]

1846. Recovery of delinquent tax.

SEC. 1846. It shall be the duty of the district attorney of the county to commence a civil action, in the name of the People of the State of California, in any court of the county, to recover the delinquent taxes. [New (substituted) section, approved March 28, 1874; Amendments 1873-4, 107; took effect from passage.]

1847. Form of complaint.

SEC. 1847. In such action a complaint substantially in the following form shall be sufficient:

[Title of Court.]

The People of the State of California

vs.

(Naming the defendant.)

Plaintiff avers that the defendant is indebted to the plaintiff in the sum of \$——, district school tax for —— school district, in the county of ——, State of California, for the year 18—, and \$—— costs of collection to date.

Plaintiff demands judgment in the sum of \$——. [New (substituted) section, approved March 28, 1874; Amendments 1873-4, 107; took effect from passage.]

1848. Judgment, counsel fees.

SEC. 1848. If in such action the amount is paid, or the plaintiff recover judgment, there shall be included in such judgment the sum of ten dollars as attorney's fees. [New (substituted) section, approved March 28, 1874; Amendments 1873-4, 107; took effect from passage.]

1849. Summons in action to enforce liens on real estate.

SEC. 1849. In any action to enforce the collection of said tax, wherein any part of the tax is charged in the complaint to have been levied or assessed

(a) Repealed sections:

SEC. 1845. The school superintendent in each county must, on or before the first day of March in each year, furnish to the board of supervisors and tax collector, respectively, an estimate in writing of the cost of maintaining a school for eight months in each school district in the county, together with the cost of incidental expenses and necessary repairs; and also an estimate of the amount of public money, both state and county, to which each district will be entitled during the year, and the amount necessary to be raised in each school district to support a school eight months.

SEC. 1846. The board of supervisors in each county must, after receiving the assessment-roll from the county assessor, and must, at the time of levying other taxes in each year, levy a special school tax upon the property in each school district in which there is a deficiency, for an amount which, together with the state and county money to be received, is sufficient to maintain the school (or schools) for eight months during

the year; and such tax must be equalized and collected in the manner provided for equalizing and collecting state and county taxes. The collector must pay over the money so collected to the county treasurer, who must place it to the credit of the respective districts from which it is collected, as a special deposit, and pay it out on the warrant of the school superintendent, in the manner provided for the payment of state and county school moneys.

SEC. 1847. If the supervisors fail to levy the tax as herein provided, then the auditor must, and add it to the assessment-roll.

SEC. 1848. Any school district whose taxable property does not exceed seventy-five thousand dollars, and which does not contain more than twenty-five children between the ages of five and fifteen years, must, on a proper showing of the facts, be exempted from the special taxation provided for in the two preceding sections.

against, or to be a lien upon any real estate or improvements on real estate, it shall be competent to proceed *in rem* against such real estate or improvements, or against both, such real estate being described in the summons in such manner as to designate the particular tract or tracts of land sought to be charged, and in case of improvements, designating the tract of land on which the improvements are situated; and the description shall be sufficient, if it can be ascertained what land is intended, the summons also stating the amount of taxes claimed as a lien, and the year in which the taxes were assessed. Such summons need not name any particular defendant, but may be directed to all owners, known and unknown, of the property described; and such action may, at the option of the district attorney, also proceed against any or all persons or corporations who are under obligations to pay the tax. [*New section, approved March 28, 1874; Amendments 1873-4, 108; took effect from passage.*]

1850. Service of summons by publication.

SEC. 1850. Service of summons, whether issued by the district court or a justice's court, may be made by publication of a copy of the summons once a week for four successive weeks, in a newspaper published in the county in which the action is commenced. The service of the summons shall be complete at the expiration of the time of such publication. [*New section, approved March 28, 1874; Amendments 1873-4, 108; took effect from passage.*]

1851. Judgment lien.

SEC. 1851. Judgments rendered in such cases in the district court shall be docketed and become liens upon all property of the defendant liable to taxation, and may be enforced against the same; and the district attorney may file transcripts of judgments rendered in justices' courts, under this article, with the county clerk, who shall, thereupon, docket such judgments, and they shall become liens from and after such docket entry, in like manner as judgments rendered in the district court under this article, and the county clerk may issue execution on such docketed justice's judgment as on judgments rendered in the district court. [*New section, approved March 28, 1874; Amendments 1873-4, 109; took effect from passage.*]

1852. Proceedings in action, what law to govern.

SEC. 1852. The law regulating proceedings in civil cases in the courts of justice in this state, so far as the same is not inconsistent with the provisions of this article, is hereby made applicable to proceedings under this article; and any deed derived from a sale of real property under this act, shall be conclusive evidence of title, except as against actual frauds or prepayment of taxes, and shall entitle the holder thereof to a writ of assistance from the district court to obtain possession of such property; provided, that the sheriff, in selling said property, shall only sell the smallest quantity that any purchaser will take, and pay the judgment and costs; and, provided further, that when property is sold belonging to minors or persons under legal disability, they shall have until one year after said disability is removed, to redeem said property, by paying the whole bid and all subsequent taxes and interest. All moneys collected in this behalf, except costs and charges, shall, without delay, be paid to the treasurer of the county, for the use of the district in which the tax was levied; and the date thereof shall be entered opposite the proper name or property in the delinquent list, which shall be open to public inspection. [*New section, approved March 28, 1874; Amendments 1873-4, 109; took effect from passage.*]

ARTICLE XX.

GENERAL PROVISIONS RELATIVE TO SCHOOL FUNDS AND TAXES.

1857. *No compensation allowed to certain officer for collecting, etc., school moneys.*

SEC. 1857. No tax collector or county treasurer must charge or receive any fees or compensation whatever for collecting, receiving, keeping, or disbursing any school moneys; but the whole moneys collected must be paid to the county treasurer.

1858. *Apportionment of state and county school fund, how made.*

SEC. 1858. All state school moneys apportioned by the superintendent of public instruction, must be apportioned to the several counties in proportion to the number of school census children between five and seventeen years of age, as shown by the returns of the school census marshal of the preceding school year; provided, that Indian children, who are not living under the guardianship of white persons, and Mongolian children, shall not be included in the apportionment list. The school superintendent of each county must apportion all state and county school moneys as follows:

1. He must ascertain the number of teachers each district is entitled to, by calculating one teacher for every one hundred census children, or fraction thereof of not less than fifteen census children, as shown by the next preceding school census;

2. He must ascertain the total number of teachers for the county, by adding together the number of teachers assigned to the several districts;

3. Five hundred dollars shall be apportioned to each district for every teacher assigned it; provided, that to districts having ten and less than fifteen census children, shall be apportioned three hundred dollars;

4. All school moneys remaining on hand, after apportioning five hundred dollars to each district having fifteen census children or more, for every teacher assigned it, and after apportioning three hundred dollars to districts having less than fifteen census children, must be apportioned to the several districts having not less than fifty census children, in proportion to the number of census children in each district. [*Amendment, approved March 28, 1874; Amendments 1873-4, 114; took effect from passage.*^(a)]

[As to apportionment of school moneys in certain counties, see ante, 1543.]

1859. *Apportionment of state and county school fund, how made.*

SEC. 1859. On or after the first day of July, eighteen hundred and seventy-five, no school district is entitled to receive any apportionment of state or county school moneys, which has not maintained a public school for at least six months during the then next preceding school year; but any new district formed by the division of an old one, is entitled to its apportionment when the time that school, maintained in the old district before division, and in the new district after division, is equal to at least eight months. Any school district which neglects or refuses to adopt and use the state series of text books, and state course of studies required by law, is not a school district within the meaning of this article. [*Amendment, approved March 28, 1874; Amendments 1873-4, 110; took effect from passage.*^(b)]

(a) Original section:

SEC. 1858. All state school moneys apportioned by the superintendent of public instruction, and all county school moneys apportioned by school superintendents, must be apportioned to the several school districts and cities in proportion to the number of school children between five and fifteen years of age, as shown by the returns of the school census marshals for the next preceding school year; but Indian children who are living not under the guardianship of white persons, and Mongolian children, must not be included in the apportionment.

It was amended by act of March 13, 1874; Amendments 1873-4, 83, so as to read like the amendment in the text, except that it did not have the proviso in the third subdivision, nor the following words in the fourth, "having fifteen census children or more," or "and after apportioning three hundred dollars to districts having less than fifteen census children."

(b) The original section did not have the words, "On or after the first day of July, 1875" nor "and state course of studies." It had the words "three months" instead of "six months" and "eight months."

1860. *Same.*

SEC. 1860. No school district is entitled to receive any apportionment of state or county school moneys unless the teachers employed in the schools of such district hold legal certificates of fitness for teaching, in full force and effect.

1861. *What state school fund may be used for.*

SEC. 1861. The state school fund, excepting as otherwise provided in this chapter, must be used for no other purpose than the payment of teachers.

ARTICLE XXI.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC SCHOOLS.

1867. *Insulting or abusing teacher, when a misdemeanor.*

SEC. 1867. Any parent, guardian, or other person, who shall insult or abuse any teacher in the presence of the school, shall be guilty of a misdemeanor, and be liable to a fine of not less than ten nor exceeding one hundred dollars. [*New section, approved March 28, 1874; Amendments 1873-4, 110; took effect from passage.*]

1868. *Disturbing public school, a misdemeanor.*

SEC. 1868. Any person who shall willfully disturb any public school, or any public school meeting, shall be guilty of a misdemeanor, and liable to a fine of not less than ten nor more than one hundred dollars. [*New section, approved March 28, 1874; Amendments 1873-4, 110; took effect from passage.*]

1869. *Issuance of certificate or diploma otherwise than as provided, a misdemeanor.*

SEC. 1869. Any state, county or city, or city and county superintendent, or any state, county, or city and county board of examinations, who shall issue a certificate or diploma, except as provided for in this title, shall be guilty of misdemeanor. [*New section, approved March 28, 1874; Amendments 1873-4, 110; took effect from passage.*]

1870. *School officers and teachers prohibited from acting as agent, etc.*

SEC. 1870. No officer named in this title, or teacher in any public school held under the provisions of this title, must act as agent for any author, publisher, bookseller, or other person, to introduce any book, apparatus, furniture, or any other article whatever, in the common schools of this state, or any one or more of them, or directly or indirectly contract for or receive any gift or reward for so introducing or recommending the same; and any officer so acting or receiving must be deemed guilty of a misdemeanor, and on conviction, be punished by fine or imprisonment, and be removed from office. [*New section, approved March 13, 1874; Amendments 1873-4, 85; took effect from passage.*]

1871. *Applicants must present evidence of good character.*

SEC. 1871. Diplomas or certificates shall be issued by any state, county, city, or city and county board of examination, to such persons only as shall have given evidence of good moral character. [*Amendment, approved March 28, 1874; Amendments 1873-4, 111; took effect from passage.*^(a)]

1872. *Appeals from orders revoking certificates or diplomas.*

SEC. 1872. When a state certificate or diploma is revoked, the holder may appeal to the state board of education; and when any other certificate is revoked he may appeal to the state board of examination.

(a) Original section:
SEC. 1871. Applicants for diplomas or certificates must produce satisfactory evidence of good moral character.

1873. *School officers may administer oaths.*

SEC. 1873. Every officer charged with the performance of duties under the provisions of this chapter may administer and certify oaths relating to offices or official matters concerning public schools.

1874. *Books once adopted must be continued four years—new books, when and how adopted.*

SEC. 1874. Any books once adopted as part of a uniform series of text-books must be continued in use for not less than four years; provided, that if at any time after their adoption, the retail price of such books is raised above the first introduction price, some other books may be substituted for such books; provided further, that such substitution, or the adoption of new books in place of books which have been in use not less than four years, must be in the following manner:

1. At least six months' notice must be given of any proposed change of text-books.

2. Publishers of text-books must be invited to submit proposals for the supplying of the required text-books; said proposals must be accompanied by sample copies of the books proposed to be furnished, together with the statement of the retail price at which the books will be sold in this state, for the full time for which the books are adopted.

3. If no proposals are received, as required in the preceding subdivision, or if the books proposed to be furnished are inferior in contents, or in binding, paper, typography, or presswork, or are to be sold at a higher retail price than the books already in use, then the books already in use must be continued in use. [*Amendment, approved March 28, 1874; Amendments 1873-4, 112; took effect from passage.*^(a)]

An Act to prevent changes in the text-books in use in the public schools.

Approved December 13, 1875; 1875-6, 1.

Text-books to be continued in use.

SECTION 1. The text-books in use in the public schools during the years eighteen hundred and seventy-three, eighteen hundred and seventy-four, and eighteen hundred and seventy-five, shall be continued in use in all the public schools of this state until otherwise provided by statute, any provision in the existing law, or any act of the state board of education done, or to be done, to the contrary notwithstanding.

SEC. 2. This act shall be in force from and after its passage.

1875. *Penalties for neglect to use the books adopted.*

SEC. 1875. If any city or district refuse or neglect to use the books that may be prescribed, or use any other text-books in any of the prescribed studies, the superintendent of public instruction must withhold from such city, town, or district twenty-five per cent. of all state school moneys to which it may be entitled until it comply; and any moneys so withheld must be apportioned by the superintendent at the next annual apportionment in the same manner as other school moneys in the treasury.

1876. *Certain persons not to be interested in contracts.*

SEC. 1876. No school trustee or member of any board of education must be interested in any contract made by the board of which he is a member; and any contract made in violation of this provision is void.

1877. *Printing and binding, by whom to be done.*

SEC. 1877. All printing or binding required under this chapter must be exe-

(a) The original section consisted of the first clause alone down to and including the words "four years."

cuted by the state printer in the form and manner and at the prices of other state printing, and be paid for in like manner.

1878. *School year, commencement of.*

SEC. 1878. The school year begins on the first day of July, and ends on the last day of June.

TITLE IV.

State Militia.

CHAPTER I. ENROLLED MILITIA	1895
II. NATIONAL GUARD.....	1912
III. CALLING AND DRAFTING THE MILITIA INTO ACTUAL SERVICE....	2039
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V. BOARD OF MILITARY AUDITORS	2093
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CHAPTER I.

ENROLLED MILITIA.

1895. *Who are subject to military duty.*

SEC. 1895. Every able-bodied male inhabitant of this state, except Mongolians and Indians, between the ages of eighteen and forty-five years, not exempt by law, is subject to military duty. But no alien is obliged to serve or bear arms against the state to which his allegiance is due.

1896. *Who are exempt from military duty.*

SEC. 1896. The following persons are exempt from military duty and enrollment:

1. Ministers of religion;
2. Civil and military officers of the United States;
3. Officers of foreign governments;
4. Civil officers of the State of California;
5. All persons exempted from military duty by the laws of the United States.

1897. *Assessor to enroll persons subject to military duty—Tax collector to make enrollment in San Francisco.*

SEC. 1897. The district or county assessor of each and every revenue district or county in this state must, at the same time in each year when he prepares a roll containing the taxable inhabitants of his district or county, enroll all the inhabitants thereof subject to military duty, which roll must be sworn to by him and delivered to the clerk of the board of supervisors at the same time he delivers the assessment roll. In the city and county of San Francisco the tax collector must perform the duties by this section imposed upon assessors.

1898. *Penalty for neglect or refusal to make return.*

SEC. 1898. If any assessor or the tax collector of the city and county of San Francisco neglects or refuses to perform any of the duties required of him by this chapter, he is subject to the same liabilities as are provided by law for a neglect or refusal to perform any of the duties required of him in the assessment of taxes, and, in addition, forfeits not less than three hundred nor more than one thousand dollars, to be sued for in the name of the people of the state, by the district attorney of the respective county, and when recovered to be paid into the military fund of the state. If the clerk of the board of equalization

neglects or refuses to make and deliver to the brigadier-general of the brigade to which his county belongs the triplicate of the military assessment roll, as directed in this chapter, he forfeits not less than three hundred nor more than five hundred dollars, to be sued for, recovered, and disposed of in the same manner.

1899. *Boards of equalization to correct the roll.*

SEC. 1899. The board of equalization must correct the roll at the same time and in the same manner as is prescribed by law for the correction of the assessment roll.

1900. *Copies to be forwarded to brigadier-general.*

SEC. 1900. The clerk of the board of supervisors must deliver to the brigadier-general of the brigade to which his county belongs a triplicate of such roll certified by him, within ten days after the board of equalization have completed their corrections.

1901. *Compensation of assessors.*

SEC. 1901. The compensation of assessors for making out the military roll must be determined by the board of supervisors of the several counties, at the rate of five dollars for each one hundred names of persons returned by the assessors as subject to military duty.

1902. *Muster roll to be made by brigadier-general.*

SEC. 1902. Each brigadier-general must, on the first Monday in October of each year, make from the rolls received by him a muster roll, showing the number of persons within the limits of his command subject to military duty, the original of which, signed by him, must be filed in his office, and a copy thereof transmitted at once to the adjutant-general.

CHAPTER II.

THE NATIONAL GUARD.

ARTICLE I. GENERAL PROVISIONS RELATING TO NATIONAL GUARD.....	1912
II. COMPANIES	1951
III. REGIMENTS AND BATTALIONS.....	1982
IV. DIVISIONS AND BRIGADES.....	2003
V. PARADES AND DRILLS.....	2018

ARTICLE I.

GENERAL PROVISIONS RELATING TO THE NATIONAL GUARD.

1912. *National guard, of what it consists.*

SEC. 1912. The organized uniformed militia of the state are known as the national guard. This force shall not exceed thirty-six companies, as follows: thirty-one companies of infantry, three companies of cavalry, and two of artillery; and must be located throughout the state with reference to the military wants thereof, means of concentration, and other military requirements. [*Amendment, approved March 30, 1876; Amendments 1875-6, 30; took effect from and after July 1, 1876.*^(a)]

1913. *Board of location and organization.*

SEC. 1913. The commander-in-chief, major-general, adjutant-general, and the brigadier-general of each brigade, constitute a board for location and organization of the national guard within such brigade, with power to transfer, attach, or disband companies, and to reorganize at pleasure regiments and battalions.

(a) The original section instead of "militia" had different arms, not to exceed in all forty;" instead of the word "troops;" instead of "shall not exceed thirty-" "thirty-one" the words "thirty-two," and instead of six companies" the words "consists of companies of "three companies" the word "six."

1914. *National guard to be organized into regiments.*

SEC. 1914. All companies of the national guard must as far as practicable be organized into regiments, battalions, and batteries.

1915. *What officers belong to.*

SEC. 1915. All commissioned officers of the staff of the commander-in-chief, the adjutant-general, and the officers of his staff, the major-general and brigadier-generals, and all officers of their respective staffs, belong to the national guard, and are at all times subject to be called into active service by the commander-in-chief; and when called into active service, each officer must be called and mustered according to his commission.

1916. *Governor commander-in-chief.*

SEC. 1916. The governor is commander-in-chief of the national guard.

1917. *Staff of commander-in-chief.*

SEC. 1917. His staff consists of one adjutant-general, with the rank of brigadier-general; one chief engineer, one paymaster-general, one judge advocate general, and one surgeon-general, each with the rank of colonel, and six aids-de-camp, with the rank of lieutenant-colonel; appointed by and holding office at the pleasure of the commander-in-chief.

1918. *Appointment and term of office of generals.*

SEC. 1918. The commander-in-chief, by and with the advice and consent of the senate, must appoint one major-general, and for each brigade of the national guard of the state, one brigadier-general, who must be citizens of the United States and of the state; and the brigadier-generals must be residents of localities within the brigades for which they are appointed. They hold their offices for the term of four years.

1919. *Restrictions in residence of staff officers.*

SEC. 1919. The staff officers must be residents of the state and of their respective brigades.

1920. *Effect of line officers accepting commissions on staff.*

SEC. 1920. Any officer of a regiment, battalion, or company, accepting any staff appointment, except that of adjutant and quartermaster, is held to have resigned his commission in such regiment, battalion, or company.

1921. *Oath of officers and members.*

SEC. 1921. All officers and soldiers of the national guard, on becoming members and before performing duty, must take and subscribe the following oath, which all commissioned officers thereof are authorized to administer: "I do solemnly swear that I will support the constitution of the United States and the constitution of the State of California, and will maintain and defend the laws and all officers employed in administering the same." Which oath, certified by the officer administering the same, must be returned to the adjutant-general and be preserved with the rolls of companies.

1922. *System of instruction.*

SEC. 1922. The systems of instruction prescribed for the different arms in the United States army must be followed in the military drills and instruction by the national guard and the enrolled militia when called into active service.

1923. *Uniform.*

SEC. 1923. The uniform of the national guard is the same as that adopted and in use by similar troops in the army of the United States. Companies already organized may wear the uniform now in use until supplied by the state with the proper uniform, after which the uniform so supplied must be worn, except at company parades or drills. No moneys received from the state must

be used or applied to the purchase of uniforms other than those first in this section mentioned. The uniform of generals and staff officers is similar to that of officers of the same grade in the army of the United States.

1924. *Rank of officer.*

SEC. 1924. All commissioned officers of regiments, battalions, and companies of the national guard must take rank according to the date assigned them by their commissions; and when two of the same grade are of the same date their rank must be determined by length of previous military service in the state; and if of equal service, then by lot. Officers of regiments, battalions, and companies of the national guard in all cases are of superior rank to officers of the enrolled militia of the same grade, irrespective of the date of their commissions.

1925. *Officers re-elected not to be recommissioned.*

SEC. 1925. When an officer is re-elected no new commission issues, but a certificate of such election must be indorsed upon his original commission.

1926. *Resignations, how made.*

SEC. 1926. Any officer resigning his commission must do so in writing, and transmit the same through his immediate commanding officer, who will make his indorsement thereon, and the resignation takes effect when accepted by the commander-in-chief.

1927. *Vacancies in elective offices, how filled.*

SEC. 1927. Vacancies in elective offices are filled by election. When vacancies occur at an election through the promotion of any officer, such vacancies may then and there be filled without further order.

1928. *Absence or removal, when deemed resignation.*

SEC. 1928. Any commissioned officer who removes from the limits of his brigade is deemed to have resigned, and the major-general, brigadier-general, or any commissioned officer who absents himself from the state for more than three months, without the permission of the commander-in-chief, is deemed to have resigned.

1929. *Discharges, when and by whom granted.*

SEC. 1929. No officer of the national guard inferior in grade to a regimental or battalion commander or an officer commanding an unattached company, has power to grant discharges to non-commissioned officers, artificers, musicians, or privates. All discharges must be in writing, and must set forth fully the cause of the discharge, and be signed by the officer granting it.

1930. *Disobedience of orders, unsoldierlike conduct—penalty.*

SEC. 1930. Any officer or private on military duty who disobeys the orders of his superior, uses reproachful or abusive language to his superior, or misbehaves or demeans himself in an unofficer or unsoldierlike manner, must be immediately arrested, if a commissioned officer, and if a non-commissioned officer or soldier, must be disarmed and put under guard, and tried and punished by a court-martial, according to law and military usage.

1931. *Interrupting officer or private in discharge of his duty—penalty.*

SEC. 1931. If any person interrupts, molests or insults; by abusive words or behavior, any officer or private while in the performance of his military duty, he must be immediately put under guard and kept, at the discretion of the commanding officer of the forces engaged in the performance of such duty, until the setting of the sun of the same day on which the offense is committed.

1932. *Expulsion for disgraceful cause bar to re-entry.*

SEC. 1932. No non-commissioned officer, artificer, musician or private expelled from his company, or dismissed from service for any disgraceful cause, must be

permitted to again enter any company of the national guard, except the offense is pardoned by the commander-in-chief.

1933. *Protection of parade ground.*

SEC. 1933. The commanding officer of any parade, review or drill, and the officer in charge of any rendezvous, may cause the ground selected for that purpose to be marked or designated in such a manner as not to obstruct the passage of travelers on any public highway; and if any person, during the occupation of such ground for such military purpose, enters upon such ground without the permission of the officer commanding or in charge, he may be put and kept under guard, by the order of such commander, until the setting of the sun of the same day.

1934. *By-laws.*

SEC. 1934. Regimental, battalion and company rules of government and by-laws, regularly adopted and approved by such regiments, battalions or companies, not inconsistent with the provisions of this title, may be adopted and enforced in such regiments, battalions and companies.

1935. *Fines.*

SEC. 1935. All fines and penalties for non-attendance upon drills, parades, and inspections, legally determined and imposed under the provisions of such rules and by-laws, may be collected by action in justice's court, in the name of the people of the State of California; and the books and records of regiments, battalions, and companies, and the proceedings under which delinquents are fined, are prima facie evidence of the facts therein stated. [*Amendment, approved March 30, 1874; Amendments 1873-4, 35; took effect July 6, 1874.*^(a)]

1936. *Exemption from poll tax, etc.*

SEC. 1936. All officers, musicians, and privates of the national guard, who comply with all military duties, as provided in this chapter, are entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description. All officers, non-commissioned officers, musicians, and privates, who have faithfully served in the military service of this state, for the space of seven consecutive years, and receive the certificate of the adjutant-general certifying the same, are thereafter exempted from further military service, except in time of war. And the adjutant-general must issue such certificate of exemption, when it appears that the party applying is entitled to the same. [*Amendment, approved March 30, 1874; Amendments 1873-4, 36; took effect July 6, 1874.*^(b)]

1937. *List of persons so exempt to be given to assessor.*

SEC. 1937. Each commander of a company of the national guard must make out a list, certified under oath before a notary public, on or before the first day of March of each year, of every officer, non-commissioned officer, musician, and private of the company entitled to exemption from tax, which list must be transmitted to the colonel or commanding officer of the regiment or battalion to which such company belongs, who must transmit the same, together with a list of his field and staff and non-commissioned staff, made out in like manner and certified by him under oath before a notary public, to the brigadier-general, which lists, if correct and approved by the brigadier-general, must by him be served upon the county assessor of the county in which such regiments, battalions, or companies are located; and the county assessor must thereupon note opposite the names of all persons such exemption.

(a) The original section had the word "primary" instead of "prima facie."

(b) The original section after the words "head tax of every description" had the words "exemption from jury duty and from service on any posse comitatus."

1938. *Commander-in-chief may disband, etc.*

SEC. 1938. The commander-in-chief may at any time disband any portion of the national guard.

1939. *Rules and regulations of United States army, how far applicable.*

SEC. 1939. The rules and regulations of the army of the United States so far as the same may be applicable and not inconsistent with the laws of this state, constitute the rules and regulations for the government of the national guard.

1940. *No fees allowed to officers for administering oaths.*

SEC. 1940. No officer is entitled to charge or receive any fee or compensation for administering or certifying any oaths administered or certified under the provisions of this chapter.

ARTICLE II.

COMPANIES, AND THE DISTRIBUTION OF ARMS.

1951. *Applications for leave to organize companies.*

SEC. 1951. Whenever a sufficient number of persons, residents of any county in this state, subject to military duty, subscribe a call for the organization of a company, the adjutant-general, upon the application of such person, and with the approval of the general of brigade, must present the same to the board for the organization of the national guard.

1952. *If accepted, brigadier-general must appoint person to organize.*

SEC. 1952. If such company is accepted, the adjutant-general must direct the brigadier-general to appoint some person, resident of the county, to open a book in which to enter the names of persons so applying, and must fix a time and place of meeting for the purpose of organization, by giving ten days, notice thereof, by publication in some newspaper, or by posting notices in at least three public places in the county.

1953. *Organization.*

SEC. 1953. The person appointed must:

1. Preside at such meeting and organize the same;
2. Superintend the election for commissioned officers of the company, which must be by ballot;
3. Make out, after such election, a list of persons organized, a certificate of each officer elected, together with a copy of the proceedings of the meeting, and a copy of his appointment, and of the notice of the meeting, certified by him, and transmit them to the brigadier-general commanding the brigade.

1954. *Brigadier-general to act upon certificate, and transmit it.*

SEC. 1954. The brigadier-general must, if found correct, transmit the same, with his approval, to the adjutant-general.

1955. *Company to be listed and officers commissioned.*

SEC. 1955. If such company has been organized and the officers elected in conformity with the provisions of this chapter, the company must be listed in the office of the adjutant-general as a company of the national guard, and the officers elected must be commissioned and hold office for the term of two years.

1956. *Non-commissioned officers of companies.*

SEC. 1956. All company non-commissioned officers of the national guard must be nominated by commanders of their respective companies, subject to the approval of the commanders of the regiment or battalion; and such non-commissioned officers cannot thereafter be removed or reduced in rank except as herein provided, or by the commander of the regiment or battalion, for neglect of duty or other sufficient cause.

1957. Non-commissioned officers of batteries.

SEC. 1957. Commanders of batteries and unattached companies have the same authority with non-commissioned officers as is herein conferred upon commanders of regiments and battalions.

1958. Company name or number.

SEC. 1958. Each company of the national guard may adopt a distinct name; but if attached must be known by a particular letter or number in the regiment or battalion to which it belongs.

1959. Company roll and term of service.

SEC. 1959. All persons on entering the national guard must sign a company roll, and join for not less than three years' service.

1960. Person not to be member of two companies at the same time.

SEC. 1960. No person can be a member of two companies at the same time; and any member of a company who removes beyond the limits of the county is discharged from such company.

1961. Companies, how armed and equipped.

SEC. 1961. The companies of the national guard are armed and equipped in the same manner as similar corps in the United States army.

1962. Number of officers and privates.

SEC. 1962. The companies of the national guard are composed of the following officers and privates, viz.:

1. Each company of cavalry, of one captain, one first lieutenant, one senior and one junior second lieutenant, five sergeants, four corporals, one trumpeter, one farrier and not less than thirty nor more than eighty privates;

2. Each company of infantry, of one captain, one first lieutenant and one second lieutenant, one orderly sergeant, one quartermaster sergeant, four sergeants, eight corporals, one marker, one drummer, one fifer and not less than forty nor more than one hundred privates;

3. Light batteries, of one captain, two first lieutenants, two second lieutenants, one first sergeant, one quartermaster sergeant, six sergeants, twelve corporals, two musicians, one wagoner and not less than thirty privates.

1963. Requisition for arms and equipments.

SEC. 1963. When a company is organized, its commanding officer may make a requisition through the proper military channel for such arms and accoutrements, ammunition, clothing and stores as are required.

An Act to furnish arms for the use of military academies in the state.

Approved February 20, 1872; 1871-2, 121.

Military academy—majors.

SECTION 1. That when a military academy has been established within the state, having not less than eighty boys, uniformed, drilled, and instructed in strict accordance with the tactics of the regular United States army service, and all its course of education and economy conducted upon strict military principles, the military instructor of such academy, when regularly elected by the board of trustees or other lawful authority of the academy, be commissioned in the national guard of California, with the rank of major.

Bond and issue of arms, etc.

SEC. 2. That upon giving bond, with good security, to be approved by the county judge of the county where the academy is situated, conditioned for the safe keeping against fire, loss, and against all damages, in twice the value, that arms and accoutrements, the property of the state, be issued for the use of such military academy.

Requisition.

SEC. 3. The adjutant-general of the state is hereby authorized to issue such arms and accoutrements as may be needed by the said military academies, without a monthly allowance, in the same manner as arms and accoutrements are issued to regular organized companies of the national guard of California, upon requisition made for this purpose, approved by the commander-in-chief.

SEC. 4. This act shall take effect immediately.

1964. *Proceedings on approval of requisition.*

SEC. 1964. If the commander-in-chief approve the requisition, he must make an order upon the back thereof directing the issue by the adjutant-general, who must immediately notify the officer making the requisition that the arms, accoutrements, and ammunition, or any portion thereof, are ready to be issued.

1965. *Bonds and security.*

SEC. 1965. Thereupon such officer must give such bonds and security as may be required by the adjutant-general to secure the state from loss on account of use or misapplication thereof.

1966. *Issue of arms, etc.*

SEC. 1966. Such bonds being to his satisfaction, and on receiving duplicate receipts from such company officer, the adjutant-general must make the issue.

1967. *Receipt.*

SEC. 1967. The adjutant-general must file one copy of such receipts in his office, and transmit the other to the general of brigade.

1968. *Inspection of arms, etc.*

SEC. 1968. All arms, equipments, and military stores are subject to examination by the inspector and ordnance officers of the state, and of any other officer designated by the commander-in-chief for that purpose.

1969. *Repair of arms, etc.*

SEC. 1969. If such officer find any of such property out of repair, injured or defective, he must immediately notify the facts to the commander-in-chief through the proper channel, who, if the damage is not repaired, and the defects and losses supplied within a reasonable time, must order the same to be done under the direction of some officer; and the vouchers for the expense thereof, when audited by the state board of military auditors, must be paid from the military fund on the warrant of the controller.

1970. *Musters and muster-rolls.*

SEC. 1970. The commanding officer of each company must, in the month of September in each year, muster and inspect his company, and make out and certify triplicate muster-rolls showing the names and number of the members of the company, the officers in the order of their rank, and the privates in alphabetical order, and he must also attach to each roll a list of the ordnance, ordnance stores, arms, accoutrements, clothing, and other property of the state in possession of the company. He must transmit, through the proper military channels, one copy of the roll and list attached, to the major-general, one to the brigadier-general of his brigade, and one to the adjutant-general.

1971. *Same.*

SEC. 1971. If such company forms a part of any organized battalion or regiment, the commanding officer thereof must transmit the same, with a muster-roll of the field and staff officers of his regiment or battalion, to the adjutant-general, through the proper channels of military correspondence.

1972. *Same.*

SEC. 1972. When any regiment or battalion is composed of companies located in any one town or city of the state, the same may be mustered by its commanding officer as a regiment or battalion.

ARTICLE III.**REGIMENTS AND BATTALIONS.****1982. *Regiments and battalions of infantry.***

SEC. 1982. A regiment of infantry of the national guard consists of not less than six nor more than eight companies. Any less number of companies than six constitute a battalion.

1983. *Regiments of cavalry.*

SEC. 1983. A regiment of cavalry consists of not less than eight nor more than twelve companies.

1984. *Field officers, number and designation.*

SEC. 1984. The field officers of a regiment are one colonel, one lieutenant-colonel, and one major. A cavalry regiment may have two majors. The field officers of a battalion, when composed of six companies and less than eight, are one lieutenant-colonel and one major; when composed of three companies and less than six, then one major only.

1985. *Mode of election.*

SEC. 1985. Such officers are elected by the commissioned officers of the different companies comprising the regiment or battalion; and if the regiment or battalion is already formed, by all the commissioned officers thereof, and hold office for the term of four years. Upon application of the officers entitled to elect, the general of brigade to which such regiment or battalion is attached or to be attached, must appoint a suitable person to preside at the election, who must give notice of his appointment, of the time and place of holding the election, and of the offices to be filled, which notice must be published at least ten days in some newspaper published within the limits of the brigade, or, if no paper is published within such limits, by posting notices in at least three conspicuous places.

1986. *Returns of election.*

SEC. 1986. Such presiding officer must make return of the election held, through the proper military channels, to the adjutant-general, who, upon finding the same in accordance with the provisions of this chapter, must notify the commander-in-chief thereof.

1987. *Battalions of light artillery.*

SEC. 1987. When two or more companies of light artillery are in the same brigade, they must be formed into a battalion and be commanded by a major, if composed of two companies, and by a lieutenant-colonel if of three companies and less than six.

1988. *Officers, and rules and regulations for.*

SEC. 1988. In the election of officers, the appointment of non-commissioned officers, and rules of government and discipline, the provisions of this title for the government and discipline of the other arms of the national guard, as far as applicable, govern battalions of light artillery.

1989. *Drills of.*

SEC. 1989. The provisions in this title contained relating to battalion drills do not apply to light artillery; but the commanding officer of a battalion of

light artillery must personally drill each company of his command not less than three times in each year, one of which drills must be with harnessed battery.

1990. *Staff of colonel, lieutenant-colonel, and major.*

SEC. 1990. The staff of a colonel of a regiment, and of a lieutenant-colonel or a major commanding a battalion, consists of one adjutant, one quartermaster, one commissary and paymaster, and one assistant surgeon, each with the rank of first lieutenant, and one sergeant-major, and one quartermaster-sergeant, to be appointed by such commanding officer, and holding office at his pleasure.

1991. *Chaplains.*

SEC. 1991. Commanders of regiments and battalions may appoint chaplains. Sergeant standard bearers and general guides may be detailed by the commanding officer.

1992. *Drum corps.*

SEC. 1992. Commanders of regiments and battalions may concentrate the music of their different commands, and organize the same under a drum-major as a drum corps.

1993. *Bands.*

SEC. 1993. When bands of music have not been organized for any regiment or battalion in the manner provided in the regulations of the army of the United States, such regiment or battalion, through its commanding officer, may hire the services of any band of musicians at their own expense, and the persons so employed are, during the term of their engagement, subject to the same laws and regulations that govern the military with which they may serve.

ARTICLE IV.

DIVISION AND BRIGADES.

2003. *Number of brigades.*

SEC. 2003. The national guard of this state is organized into six brigades, each commanded by a brigadier-general, as follows:

First Brigade—San Diego, Los Angeles, San Bernardino, Santa Barbara, San Luis Obispo, and Monterey counties.

Second Brigade—Santa Cruz, Santa Clara, San Mateo, San Francisco, Alameda, Contra Costa, Marin, Sonoma, Solano, Napa, and Lake counties.

Third Brigade—San Joaquin, Mariposa, Tuolumne, Fresno, Stanislaus, Calaveras, Merced, Mono, Inyo, Kern, and Tulare counties.

Fourth Brigade—Sacramento, Yolo, Sutter, El Dorado, Alpine, Amador, Placer, Nevada, Yuba, and Sierra counties.

Fifth Brigade—Butte, Plumas, Lassen, Colusa, Tehama, Shasta, Trinity, and Siskiyou counties.

Sixth Brigade—Mendocino, Humboldt, Del Norte, and Klamath counties.

2004. *The brigades compose one division.*

SEC. 2004. The six brigades of the national guard compose a division, commanded by a major-general.

2005. *New counties, how attached.*

SEC. 2005. New counties hereafter organized must be attached to the respective brigade in which the larger portion of such new county is now located.

2006. *Staff of major-general.*

SEC. 2006. The staff of the major-general consists of one assistant adjutant-general, one engineer officer, one ordnance officer, one quartermaster, one commissary, one paymaster, one division inspector, one judge advocate, and one surgeon, with the rank of lieutenant-colonel, two aids-de-camp, with the rank

of major, and four staff orderlies, with the rank of sergeant-major, who are appointed by and hold office at the pleasure of the major-general.

2007. *Staff of brigadier-general.*

SEC. 2007. The staff of each general of brigade consists of one assistant adjutant-general, one engineer officer, one ordnance officer, one quartermaster, one commissary, one paymaster, one brigade inspector, one judge advocate, and one surgeon, with the rank of major, one aid-de-camp, with the rank of captain, and two staff orderlies, with the rank of sergeant-major, who are appointed by the brigadier-general, and hold office at his pleasure.

ARTICLE V.

PARADES AND DRILLS.

2018. *Parades, time of.*

SEC. 2018. The national guard of California must parade at least three times in each year:

1. On the fourth day of July, by regiment or battalion, if practicable;
2. On the ninth day of September, by battalion, if practicable;
3. In the month of May, by companies, for target practice.

2019. *Public receptions and celebrations.*

SEC. 2019. Upon receptions, or upon the celebration of any event of public importance, the commanding officer of the brigade may order out any portion of the national guard under his command to join in such parade.

2020. *Companies parading with less than thirty members may be disbanded.*

SEC. 2020. Any company parading at any of the parades or drills in this article provided for with a less number than thirty-two, rank and file, must be reported to the adjutant-general, and by him notified to the commander-in-chief, who in his discretion may disband the same.

2021. *Exemptions from arrest.*

SEC. 2021. No person under military orders for parade, drill, or other military service, is subject to arrest on civil process while going to, or returning from, or on such parade.

2022. *Drills, regimental and battalion, time of.*

SEC. 2022. Commanders of regiments and battalions must assemble their commands for battalion drills at least once in each year, exclusive of the legal brigade, regimental, or battalion parade.

2023. *Companies failing to report may be disbanded.*

SEC. 2023. Any company failing to report for duty at such assemblage must be reported to the adjutant-general, who must notify the same to the commander-in-chief, who may in his discretion disband it.

2024. *Cavalry drills.*

SEC. 2024. Cavalry must drill, mounted, at least twice in each year.

2025. *Drill of regiment not concentrated.*

SEC. 2025. When regiments are not concentrated, a portion of the companies may be assembled for battalion drill.

2026. *Company drills, time of.*

SEC. 2026. Each company must assemble at least once a month for drill or military instruction.

2027. *Company drills in Sacramento and San Francisco.*

SEC. 2027. The companies located in the city and county of San Francisco and in the city of Sacramento, must assemble once a week for drill.

2028. *Penalty for absence from company drills.*

SEC. 2028. All officers or members who absent themselves from three consecutive assemblages without an excuse acceptable to the commanding officer, are debarred from the privileges and exemptions provided for members of the national guard; and if a non-commissioned officer or private is reported to the commanding officer of the regiment or battalion as having so absented himself, he may, upon the recommendation of the commanding officer of the company to which he belongs, be expelled the service.

2029. *Book to be kept showing who was present at company drill.*

SEC. 2029. Commanders of companies must keep a book, in which must be entered the number of officers, non-commissioned officers, and privates, respectively, present at each drill, and must therefrom make monthly returns to the commanding officer of the regiment or battalion.

2030. *Schools for instruction.*

SEC. 2030. The commanding officer of any brigade, regiment or battalion may require the officers thereof to meet for military instruction at such times and places as he may fix, and may also prescribe the mode and manner of instruction, and the rules and regulations to govern such meetings.

CHAPTER III.

CALLING AND DRAFTING THE MILITIA INTO ACTUAL SERVICE.

2039. *Militia, when and by whom called into actual service.*

SEC. 2039. In case of war, insurrection or rebellion, or of resistance to the execution of the laws of this state, or upon the call or requisition of the president of the United States, or upon the call of any officer of the United States army commanding a division, department or district in California, or upon the call of any United States marshal in California, or of the chief executive officer of any city, or of any sheriff, the commander-in-chief is authorized to call into active service any portion of the national guard or enrolled militia.

2040. *Same.*

SEC. 2040. In case of the absence of the commander-in-chief from the capital, or if it is impossible to immediately communicate with him, the civil or military officer making the requisition for troops may, if he deem the danger imminent and not admitting of delay, serve a copy of such requisition, together with a statement of the governor's absence or the impossibility of immediately communicating with him, upon the major-general, or, in his absence, upon the general of the brigade, who is authorized to exercise, with respect to calling out the troops of his division or brigade, the powers conferred in this section upon the governor; but if the call is disapproved by the governor, the troops so called into service must be immediately disbanded.

2041. *Call, how made.*

SEC. 2041. Such call must be made by an order issued and directed to the commanding officer of the company, battalion, regiment, brigade or division which is called into service, designating the particular troops called, the time and place of rendezvous, and the officer to whom they must report.

2042. *Duty of officer to whom order directed.*

SEC. 2042. If such order is directed to the major-general of division, it must be immediately communicated to the brigadier-generals, and by them to all the officers of their respective brigades.

2043. *Same.*

SEC. 2043. Every officer receiving such order must rendezvous and report for duty as herein directed; and every officer commanding an organized company or battalion of the national guard, on receiving such order, must immediately proceed to notify the same to each individual of his command, by personal notice or by publication in some newspaper, or by the posting in public places of the county or counties from which the call is made.

2044. *Same.*

SEC. 2044. Such officer must attend in person, or by deputing an officer of the organized militia in his place, at the place of rendezvous, and take the names of all volunteers for service under such call.

2045. *Organization of companies, etc., and election of officers.*

SEC. 2045. If the number of such volunteers is sufficient to form one or more companies or battalions, he must immediately call and superintend the election of the officers of such companies or battalions.

2046. *Proclamation for election.*

SEC. 2046. A proclamation of the call of such election, made by the officer calling it, at the place of rendezvous, is a sufficient notice.

2047. *Commander-in-chief may assign volunteers to companies or battalions already in active service.*

SEC. 2047. The commander-in-chief has authority, if he deem it expedient, to direct that a portion of the volunteers so presenting themselves be assigned to companies or battalions already in active service whose numbers are less than the full complement.

2048. *Organization and command of troops from different brigades.*

SEC. 2048. Where troops are called into active service from different brigades, and the number so called are not more than sufficient to constitute one complete brigade, the commander-in-chief must so organize them, and must designate the particular brigadier-general to command it.

2049. *When draft may be ordered.*

SEC. 2049. If the number of volunteers presenting themselves at the place of rendezvous is insufficient to satisfy the call of the commander-in-chief, the brigadier-general of the brigade in which such call is made must promptly proceed to draft from the enrolled militia of his brigade a sufficient number of men to satisfy the call, and this draft must be made by putting the names of all the enrolled militia of the county or counties from which the order directs the forces to be raised into a box, and drawing therefrom a sufficient number of names to satisfy the call.

2050. *Who to superintend draft.*

SEC. 2050. The major-general must be present and superintend the drafting of the enrolled militia under any call by the commander-in-chief; but his presence is not necessary to give validity to the proceedings. In case of the absence or inability of the brigadier-general, the officer next in rank of the brigade, or, in default of any officer of that brigade for duty, the major-general, or, in his default, the commander-in-chief, must designate some other officer to perform that duty.

2051. *Persons drafted to rendezvous.*

SEC. 2051. The persons drafted must be summoned by some officer appointed for that purpose by the brigadier-general in the manner prescribed by law for the summoning of witnesses in civil cases, the time and place of rendezvous, as ordered by the brigadier-general, being stated in the summons.

2052. *Election of officers.*

SEC. 2052. As soon as a sufficient number of drafted men have appeared at the rendezvous to form a company or companies they must proceed to the election of their company officers.

2053. *Refusing to rendezvous, penalty for.*

SEC. 2053. Any member of the national guard who neglects or refuses to rendezvous when ordered out by the commander-in-chief, is guilty of disobedience of orders, and may be tried and punished by a court-martial; and any member of the enrolled militia who refuses or neglects to rendezvous when drafted, is subject to a penalty of not less than fifty nor more than three hundred dollars, to be recovered by an action brought by the district attorney, in the name of the people of the state, upon the certificate of the officer appointed to make the draft, before any court of competent jurisdiction in the county from which such person was drafted, and the fine recovered must be paid into the state treasury to the credit of the general fund.

2054. *Companies, how attached.*

SEC. 2054. Any company of the enrolled militia drafted and organized, may, by direction of the commander-in-chief, be enrolled and mustered into any battalion of the national guard having less than eight companies.

2055. *Drafted men may be enrolled in existing companies.*

SEC. 2055. Drafted men of the enrolled militia not organized into companies, may, at the discretion of the commander-in-chief, be enrolled and mustered into any existing company of the national guard or enrolled militia not having the full number authorized by law and which has already been called into active service.

2056. *Substitutes.*

SEC. 2056. Any person called or drafted into service may furnish as a substitute any person fit for military duty who has not been called or drafted into service.

2057. *Same.*

SEC. 2057. When any person drafted for service offers, at or after the time of rendezvous, a suitable substitute, and such substitute consents in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would have been subject had he personally served, he must be accepted by the officer making such draft.

2058. *Same.*

SEC. 2058. The person whose substitute is so accepted is not subject to draft during the term of service of the substitute.

2059. *Rules governing conduct of troops when called out to suppress insurrection, etc.*

SEC. 2059. The conduct of troops when called out to suppress an insurrection or rebellion, to disperse a mob or enforce the laws, is provided for in section 731 of THE PENAL CODE.

2060. *Duration of commissions of officers called into actual service.*

SEC. 2060. The commission of any officer called into active service continues until he is discharged by the order of the commander-in-chief.

2061. *Vacancies occurring in actual service, how filled.*

SEC. 2061. All vacancies of officers and non-commissioned officers in active service must be filled by appointment or promotion; the first by the commander-in-chief, and the second by the commanding officer of the battalion or of the company, in case such company forms no part of any battalion.

2062. *Same.*

SEC. 2062. In filling vacancies of commissioned officers the commander-in-chief must, as a general rule, promote by seniority, or appoint on the recommendation of their superior officers those in active service, and in any case of departure from this rule the commander-in-chief must report his reasons for such departure to the senate.

2063. *Same, for personal bravery in battle, etc.*

SEC. 2063. The commanding officer of troops in active service may nominate to any vacancy for personal bravery or service in siege or battle, and if the governor commission some other person than the one so nominated, he must report his reasons to the senate; and if the senate in either of the foregoing cases disapprove of the reasons given, the commission so given is vacated, and the governor must immediately proceed, with the advice and consent of the senate, to fill such vacancy.

2064. *Rules to govern militia when in actual service.*

SEC. 2064. The rules and regulations established by congress for the government of the army of the United States are applicable to and govern the militia of this state when in active service.

2065. *Pay of officers and privates when in actual service.*

SEC. 2065. Officers and privates while on active duty in the service of the state receive the same pay as the officers and privates of the United States army of similar grade serving on the Pacific coast; the same to be audited by the board of military auditors, upon the pay-roll properly made up and signed by such officer.

2066. *Pay of officers when detailed on special duty.*

SEC. 2066. When an officer is detailed for special duty in any matter relating to the national guard, or care of state military property, by order of the commander-in-chief, he must be allowed pay proper, and such reasonable traveling expenses as the board of military auditors may allow, upon sworn vouchers showing actual expenditures.

CHAPTER IV.

COURTS, MARTIAL AND OF INQUIRY.

2076. *Who may appoint courts-martial.*

SEC. 2076. The following officers may appoint courts-martial:

1. The commander-in-chief, for the trial of general officers and all officers of the staff of the commander-in-chief;
2. The major-general, for the trial of all staff officers of the division and brigades, and for the field and staff officers of battalions and regiments;
3. Brigadier-generals, for the trial of all captains and commissioned officers under their rank in their respective brigades;
4. Commanding officers of regiments and battalions, for the trial of officers and privates of their respective commands;
5. Commanding officers of batteries or of unattached companies, for the trial of officers and privates of their respective commands.

2077. *Organization and rules.*

SEC. 2077. Courts-martial appointed under the provisions of this chapter are organized in like manner and subject to the rules and regulations governing courts-martial in the United States army. They have the same power to compel the attendance of witnesses when summoned by the judge advocate, to

preserve order in and about the court-room during the sessions, and to punish contempt, as the judges of the district courts have under the laws of this state.

2078. Powers.

SEC. 2078. Courts-martial have power on conviction to punish by depriving officers of rank by expulsion or dismissal, or by such other and usual military fines and penalties as is customary with courts-martial in the army of the United States.

2079. Revision and approval of sentence.

SEC. 2079. The officer appointing a court-martial must revise the proceedings and approve or disapprove the sentence of such court-martial, and must direct the execution of such sentence, or mitigate the punishment, or may remit the sentence of the person convicted; but the person so sentenced may apply to the commander-in-chief to revise the proceedings and to disapprove them or pardon the offense, in which case the officer approving the sentence will transmit the proceedings in the case to the commander-in-chief, and the execution of the sentence must be suspended until the proceedings are returned with the decision thereon.

2080. Fines, how collected.

SEC. 2080. For the purpose of collecting fines or penalties imposed by courts-martial, the president of any such court must make a list of all such fines and penalties, and of the persons against whom they have been imposed, and must, within fifteen days after the fines and penalties have been imposed, issue a warrant under his hand, directed to any sheriff or constable of the county, commanding him to levy and collect such fines, together with costs, upon and out of any property of the person against whom the fine or penalty was imposed, and such warrant may be executed and renewed in the same manner as executions issued from justices' courts are executed and renewed. All property, except the homestead, is subject to execution and forced sale under such warrant.

2081. No action in certain cases against members of courts-martial.

SEC. 2081. No action can be maintained against any member of a court-martial, or officer or agent acting under his authority, on account of an imposition of a fine or the execution of a sentence, on a person not liable to military duty, if such person has been summoned and notified in writing of the charges preferred against him, and has failed to appear and show his exemption before the court.

2082. Who may order courts of inquiry.

SEC. 2082. Courts of inquiry may be ordered by the commander-in-chief, by the major-general, or by any brigadier-general.

2083. Rules governing.

SEC. 2083. Courts of inquiry are governed by the same rules as similar courts in the army of the United States.

2084. Sheriffs and constables must serve subpoenas, etc.

SEC. 2084. Every sheriff and constable must serve all orders, subpoenas or process delivered to him for that purpose by any member of a court-martial.

CHAPTER V.

THE BOARD OF MILITARY AUDITORS.

2093. *Who constitute board.*

SEC. 2093. The commander-in-chief, adjutant-general and the attorney-general constitute a board of military auditors. The commander-in-chief is president, and the adjutant-general secretary; and the board must have a seal, which must be attached to all accounts audited by them.

2094. *Allowance and payment of company expenses.*

SEC. 2094. There must be audited and allowed by the board of military auditors, and paid out of the general fund, upon the warrant of the state controller, to the commanding officer of each company of cavalry or infantry of the national guard, for armory rent and incidental expenses of an armory, care and cleaning of arms and military property in charge of such company, the sum of fifty dollars per month; to the commanding officer of each light battery, the sum of twenty-five dollars per month for each gun under their command; and to the commanding officer of each regiment or battalion for incidental expenses, the sum of three dollars per month for each company under their command; to each brigadier-general the sum of three dollars per month for each company in his brigade. [*Amendment, approved March 30, 1876; Amendments 1875-6, 30; took effect from and after July 1, 1876.*^(a)]

2095. *Same.*

SEC. 2095. No claim must be allowed under the provisions of the preceding section unless an itemized account of the expenditures is made out, signed, and sworn to in duplicate by the officer claiming the same, and transmitted through the proper military channel to the adjutant-general of the state—one copy to be filed in the office of the adjutant-general, and one to be sent to the board of military auditors.

2096. *Other duties of the board.*

SEC. 2096. The board of military auditors must audit and allow all proper claims against the military fund incurred by troops in the service of this state, and officers attached to the same.

2097. *Duties of controller and treasurer.*

SEC. 2097. The controller of state must draw his warrants for any amount audited and allowed by the board, and the treasurer of state must pay the same out of the military fund.

2098. *Claims exempted from board of examiners.*

SEC. 2098. Claims audited and allowed by the board of military auditors are exempt from the provisions of Article XVIII of Chapter III, Part III of this Code. [See ante, 654.]

2099. *Allowances to companies.*

SEC. 2099. The annual sum of one hundred and fifty dollars must be audited by the board and paid out of the general fund to each company of the national guard of over sixty members, and an amount in proportion to every company of less than sixty members. The amounts so audited and allowed must be paid to the commanding officers of such companies for the use thereof. A quarterly statement of the manner in which such sums have been expended must be made

(a) The original section instead of "general fund" had the words "military fund;" instead of the first "fifty" the words "not more than one hundred;" before the second "fifty" the words "not more than;" instead of "three dollars per month for each company under their command" the words "not more than

three dollars for each company per month; and to the commanding officer of each battalion the sum of not more than three dollars per month for each company in his battalion." It had the words "of brigade" after "brigadier-general," but not the words "or battalion" after "regiment."

by such officers to the adjutant-general. [*Amendment, approved March 30, 1876; Amendments 1875-6, 30; took effect from and after July 1, 1876.*^(a)]

An Act making appropriations for deficiencies in the payment of armory rents and other expenses of the national guard of California, as provided by law, for the twenty-fifth, twenty-sixth, and twenty-seventh fiscal years, ending June thirtieth, eighteen hundred and seventy-six.

Approved March 30, 1876; 1875-6, 575.

[This act appropriated \$17,905 for deficiency for armory rents, annual allowances and other expenses, for the year ending June 30, 1874; and \$59,928 for armory rents, annual allowances and other expenses for the two years ending June 30, 1876.]

CHAPTER VI.

ADJUTANT-GENERAL.

2107. *General duties of adjutant-general.*

SEC. 2107. It is the duty of the adjutant-general:

1. To keep and preserve the arms, accoutrements, ammunition, and other military property belonging to the state;
2. To keep on file in his office all returns and reports made to him;
3. To keep an account, in a manner directed by the commander-in-chief, of all moneys received or disbursed by him;
4. To prepare and keep all blank forms required for the service;
5. To attest all commissions issued to military officers;
6. To authenticate, with his official seal, all papers issued from his office;
7. To make out and transmit the annual militia returns prescribed by the act of congress of March second, eighteen hundred and three.
8. To perform such other duties as are required by the provisions of this title.

[*Amendment, approved January 20, 1876; Amendments 1875-6, 31; took effect from passage.*^(b)]

2108. *Report.*

SEC. 2108. He must report to the governor a statement:

1. Of all moneys received or disbursed by him since his preceding report;
2. An account of all arms, accoutrements, ammunition, and military property belonging to the state, from what source received, and to whom issued;
3. Of the present condition of all such property under his charge;
4. The number and condition of the national guard and of the enrolled militia of the state.

2109. *To act as chief of staff.*

SEC. 2109. He is ex officio chief of staff, quartermaster-general, commissary-general, inspector-general, and chief of ordnance.

2110. *Staff.*

SEC. 2110. His staff consists of one assistant adjutant-general, with the rank of major, one aid-de-camp, with the rank of captain, and one orderly, with the rank of sergeant-major, appointed by him and holding office at his pleasure.

2111. *Transportation of arms.*

SEC. 2111. The transportation of arms, equipments, and military stores issued to troops or received by the state, and all other military transportation, must be contracted for by the adjutant-general, under the direction of the commander-in-chief, and vouchers for such transportation, when audited by the

(a) The original section, instead of "annual sum of one hundred and fifty dollars must" had the words "sum of three hundred dollars must annually;" instead of "general fund" the words "military fund." At the end of the first sentence it had the additional clause, "and also the sum of one hundred dollars to each de-

tachment of engineers," and after the words "such companies" the words "or detachments."

(b) The original section had nine subdivisions, the above eighth being ninth, and the original eighth as follows: "8. To appoint an armorer and prescribe and enforce his duties."

state board of military auditors, must be paid from the military fund, on the warrant of the controller.

2112. [SEC. 2112^(a) was repealed by act of January 20, 1876; Amendments 1875-6, 31, took effect from passage.]

2113. *Salary of adjutant-general.*

SEC. 2113. The annual salary of the adjutant-general is three thousand dollars.

2114. *Salary of assistant adjutant-general.*

SEC. 2114. The annual salary of the assistant adjutant-general is two thousand dollars.

2115. *Salaries, when and out of what fund payable.*

SEC. 2115. The salaries provided for in this chapter are payable monthly out of the general fund in the state treasury.

2116. *Official bond.*

SEC. 2116. The adjutant-general must execute an official bond in the sum of twenty-five thousand dollars.

2117. *Title in force, etc.*

SEC. 2117. The provisions of this title shall be in force and effect from and after the first day of May, eighteen hundred and seventy-two, and the chairman of the revision commission is hereby directed to have prepared and printed in pamphlet form, for the use of the adjutant-general, twelve hundred copies of the provisions of the codes relating to the militia, the cost of making the copy for the printer to be audited and allowed by the board of examiners, and paid out of the military fund in the state treasury.

TITLE V.

Public Institutions.

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CHAPTER I.

INSANE ASYLUMS.

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ARTICLE I.

THE BOARD OF DIRECTORS OF THE INSANE ASYLUM.

2136. *Under control of board of directors.*

SEC. 2136. The insane asylum, located at Stockton, is under the management

(a) Repealed section:

SEC. 2112. The annual salary of the armorer is eighteen hundred dollars.

and control of a board of directors, consisting of five persons appointed and holding their offices as provided in Title I, Part III of this Code. [See ante, 368, 369.]

2137. Powers and duties of board.

SEC. 2137. The powers and duties of the board of directors of the insane asylum are as follows:

1. To make by-laws, not inconsistent with the laws of this state, for their own government and the government of the asylum;
2. To hold stated meetings at the asylum for the transaction of business on the first Monday in each month;
3. To keep a record of their proceedings, open at all times to the inspection of any citizen;
4. To elect a medical superintendent, two assistant physicians and a treasurer.
5. To provide on the asylum grounds suitable apartments, furniture, provisions, and lights for the medical superintendent, assistant physicians, and their families;
6. To make diligent inquiry into the departments of labor and expense, the condition of the asylum and its property;
7. To report to the governor a statement of the receipts and expenditures, the condition of the asylum, the number of patients under treatment, and of such other matters touching the duties of the board as is advisable.

2138. Moneys for support of asylum, how drawn.

SEC. 2138. If the board approve the estimates made under the provisions of section 2153, it must notify the controller of state, who must draw his warrant for the amount estimated in three equal sums out of any moneys in the state treasury appropriated for the use of the asylum.

2139. Board must contract for supplies.

SEC. 2139. Upon the receipt of each report provided for in subdivision 5 of section 2152, the board of directors must advertise for contracts for furnishing the supplies therein specified, for three successive weeks, in one newspaper in each of the cities of Stockton, Sacramento, and San Francisco. The contract must be awarded to the lowest bidder, upon his giving satisfactory security for the faithful performance of the same.

2140. Compensation of directors.

SEC. 2140. The compensation of the directors is ten dollars each for every day spent in attending or traveling to the meetings of the board; not, however, to exceed one hundred and thirty dollars annually to each member.

ARTICLE II.

MEDICAL SUPERINTENDENT.

2150. Qualifications of.

SEC. 2150. The medical superintendent must be a graduate in medicine, and must have practiced his profession five years after the date of his diploma.

2151. Term of office.

SEC. 2151. His term of office is four years from and after his election.

2152. General powers and duties.

SEC. 2152. He is the chief executive officer of the asylum, with powers and duties as follows:

1. To control the patients, prescribe the treatment, and prescribe and enforce the sanitary regulations of the asylum;

2. With the consent of the board of directors, to fix the number and compensation of, and appoint, control, and remove the attendants and assistants;

3. To prescribe and enforce the performance of the duties of the attendants and assistants;

4. To prescribe and enforce the performance of the duties of the assistant physicians;

5. To ascertain and report to the board of directors the amount, character, and quality of provisions, fuel, and clothing required for the six months ending on the first of May and November in each year;

6. With the consent of the board of directors to make any expenditure necessary in the performance of his duties, except for provisions, fuel, and clothing;

7. To receive and pay to the treasurer all moneys found upon insane persons;

8. To keep a daily record of his official acts in the mode prescribed by the by-laws;

9. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible to report a statement thereof, and of the general condition of the asylum, to the board of directors.

2153. *Must estimate expenses and report to directors.*

SEC. 2153. He must estimate, quarterly, in advance, the probable expenses of the asylum, and submit such estimate to the directors, at their stated meetings, for their consideration and approval.

2154. *Salary.*

SEC. 2154. The annual salary of the medical superintendent is thirty-five hundred dollars.

2155. *Bond.*

SEC. 2155. He must execute an official bond in the sum of twenty thousand dollars.

An Act in relation to the superintendent of the state insane asylum.

Approved April 1, 1872; 1871-2, 845.

Attendance on annual meetings of superintendents of American institutions.

SECTION 1. The superintendent of the state insane asylum may attend the annual meetings of the superintendents of American institutions for the insane, and his expenses, not to exceed four hundred dollars per annum, must be audited and allowed by the board of examiners, and paid out of the state treasury.

SEC. 2. This act shall be in force from and after its passage.

ARTICLE III.

ASSISTANT PHYSICIANS.

2165. *Qualifications.*

SEC. 2165. The assistant physicians must be graduates in medicine.

2166. *Term of office.*

SEC. 2166. Their term of office is four years from and after their appointment.

2167. *General duties.*

SEC. 2167. They must perform the duties and exercise the powers prescribed by the medical superintendent or the by-laws.

2168. *Senior assistant, when to act as medical superintendent.*

SEC. 2168. During the absence or disability of the medical superintendent the assistant longest in commission must perform his duties and exercise his powers.

2169. Salaries.

SEC. 2169. The annual salary of each assistant physician is twenty-five hundred dollars.

ARTICLE IV.

TREASURER.

2179. Member of board not eligible.

SEC. 2179. No member of the board of directors is eligible to the office of treasurer.

2180. Tenure of office.

SEC. 2180. The treasurer holds his office at the pleasure of the board of directors.

2181. General duties of.

SEC. 2181. It is the duty of the treasurer:

1. To act as secretary of the board of directors;
2. To keep the accounts of the board and of the receipts and expenditures;
3. To report on the first Monday in each month to the state board of examiners a statement under oath of the expenses of the preceding month;
4. To perform such other duties as may be required of him by the by-laws or board of directors.

2182. Salary.

SEC. 2182. The annual salary of the treasurer is six hundred dollars.

2183. Bond.

SEC. 2183. He must execute an official bond in the sum of twenty thousand dollars.

ARTICLE V.

GENERAL PROVISIONS.

2193. Salaries, when and out of what fund payable.

SEC. 2193. The salaries and compensation fixed by the provisions of this chapter must be paid monthly out of the moneys appropriated for the support of the asylum.

2194. Approval and filing of official bonds.

SEC. 2194. The official bonds required by the provisions of this chapter must be approved by the board of directors, and filed and recorded in the office of the secretary of state.

2195. Restrictions upon residence of physicians.

SEC. 2195. The medical superintendent and each assistant physician must reside on the asylum grounds.

2196. Restrictions upon business of physicians.

SEC. 2196. The officers mentioned in the preceding section must not engage in the private practice of medicine, but must devote their whole time to the performance of their duties, unless granted leave of absence by the board of directors.

2197. Discharge of patients on recovery.

SEC. 2197. Insane persons received in the asylum must upon recovery be discharged therefrom.

2198. Insane convicts; reception and return of.

SEC. 2198. Insane convicts must be received into the insane asylum, and returned to the state prison again, as provided in section 1230 of THE PENAL CODE.

2219. *Restrictions upon admission of non-residents.*

SEC. 2199. No insane person, non-resident of this state, must be received into the asylum unless he became insane within this state.

2200. *Disposition of moneys unexpended at discharge or death of patient.*

SEC. 2200. If at the time of the discharge of a person from the asylum, or after the death and burial of any person therein confined, there remains in the custody of the directors or treasurer any moneys paid for the support or maintenance of such person, it must, upon demand, be repaid.

ARTICLE VI.**EXAMINATION AND COMMITTAL OF INSANE PERSONS.****2210. *Examination, before whom.***

SEC. 2210. Whenever it appears by affidavit to the satisfaction of a magistrate of the county that any person within the county is so far disordered in his mind as to endanger health, person or property, he must issue and deliver to some peace officer for service a warrant, directing that such person be arrested and taken before any judge of a court of record within the county for examination.

2211. *Two witnesses.*

SEC. 2211. When the person is taken before the judge he must issue subpoenas to two or more witnesses, best acquainted with such insane person, to appear and testify before him at such examination.

2212. *Two physicians.*

SEC. 2212. The judge must also issue subpoenas for at least two graduates of medicine to appear and attend such examination.

2213. *Witnesses, duty of.*

SEC. 2213. At the examination the person subpoenaed must appear and answer all questions pertinent to the matter under investigation.

2214. *Physicians, duty of.*

SEC. 2214. The physicians must hear such testimony, and must make a personal examination of the alleged insane person.

2215. *Certificate of physicians.*

SEC. 2215. The physicians, after hearing the testimony and making the examination, must, if they believe such person to be dangerously insane, make a certificate, under their hand, showing as near as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property;
2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease;
3. The nativity, age, residence, occupation, and previous habits of the person;
4. The place from whence the person came, and the length of his residence in this state.

2216. *To be made on forms, etc.*

SEC. 2216. The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the medical superintendent of the asylum.

2217. *Action of judge—Commitment.*

SEC. 2217. The judge, after such examination and certificate made, if he believes the person so far disordered in his mind as to endanger health, person, or property, must make an order that he be confined in the insane asylum.

2218. *Sheriff to deliver insane person, commitment, etc., at asylum.*

SEC. 2218. The insane person, together with the order of the judge and certificate of the physicians, must be delivered to the sheriff of the county, and by him must be delivered to the officer in charge of the insane asylum.

2219. *Money found on insane person to be delivered at asylum.*

SEC. 2219. Any moneys found on the person of an insane person at the time of arrest must be certified to by the judge and sent with such person to the asylum, there to be delivered to the medical superintendent, who must deliver the same to the treasurer. If the sum exceeds one hundred dollars, the excess must be applied to the payment of the expenses of such person while in the asylum; if the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the asylum.

2220. *Idiots, imbeciles, etc., not to be admitted.*

SEC. 2220. No case of idiocy or imbecility, or simple feebleness of mind, must be maintained at, nor must any case of delirium tremens be admitted into the asylum.

2221. *Fees of sheriff.*

SEC. 2221. The person delivering insane persons to the asylum is allowed therefor forty cents per mile, one way only, for the legal distance from the county seat of the county where such insane person was committed to the asylum; and for every additional patient taken at the same time, twenty cents per mile. He must also receive the necessary expense of an assistant, when more than one person is required to convey such insane persons; payment thereof to be made by the state treasurer on the controller's warrants, issued on the approval of the account by the board of examiners.

2222. *Fees of physicians.*

SEC. 2222. The physicians attending each examination of an insane person are allowed five dollars each, to be paid by the county treasurer of the county where the examination was had on the order of the board of supervisors.

An Act to provide further accommodation for the insane of the State of California, and to provide a special fund therefor.

Approved March 27, 1872; 1871-2, 673.

[This act provides for the establishment of a new asylum for the insane; for the appointment of commissioners to select a site, and for the construction and management of the institution. The site selected was Napa, and the asylum has been built there. Its management, as provided by this act, has, however, been superseded by the provisions of the act of March 6, 1876, given below. By section 22 of that act, as will be seen by reference to it, this act was continued in force only for a special purpose. Under the circumstances, this act is omitted, except its title and reference as above.]

An Act to prohibit the sale of intoxicating liquors within a certain distance of the Napa state asylum for the insane.

Approved January 15, 1874; 1873-4, 27.

No liquor to be sold within one mile of Napa asylum.

SECTION 1. It shall not be lawful for any person to keep any saloon or bar, or to sell or offer for sale any spirituous or malt liquors, within one mile of the asylum building, now in course of construction upon the property in Napa county deeded to the State of California for the site of the Napa state asylum for the insane; and any person so doing shall be guilty of a misdemeanor, and for each offense shall be punished by a fine not exceeding five hundred dollars.

SEC. 2. This act shall take effect and be in force from and after its passage.

[See in reference to the subject of the foregoing act, section 172 of the Penal Code, as amended April 3, 1876; post, 13, 172.]

An Act to provide for the completion of the Napa state asylum for the insane and for other purposes.

Approved March 24, 1874; 1873-4, 565.

[This act appropriated \$600,000 for the completion of the Napa insane asylum; legalized contracts then made, and required the asylum to be completed for the sum so appropriated.]

An Act to provide for the future management of the Napa state asylum for the insane.

Approved March 6, 1876; 1875-6, 133.

Governor to appoint five trustees.

SECTION 1. Within ten days after the passage of this act the governor shall appoint five trustees to manage the affairs of the Napa state asylum for the insane, three of whom shall be residents of Napa county; and he shall designate at the time of the appointment the respective terms of office of said trustees, under the following classification, to wit: three of said trustees shall serve for two years, and two of said trustees shall serve for four years from the time of their appointment. Their successors shall be appointed by the governor, and shall hold their offices for the term of four years and until their successors are appointed and qualified. In case of a vacancy occurring in said board, the governor shall appoint, in manner aforesaid, to fill the unexpired term.

Trustees to organize.

SEC. 2. The trustees provided for in the preceding section shall qualify by taking the usual oath of office, and shall, within ten days after such qualification, organize themselves into a board by the election of one of their number as president, and the secretary and treasurer hereinafter provided for, and, as soon as such organization has been perfected, they shall notify the same to the "board of directors" created under "An Act to provide further accommodation for the insane of the State of California, and to provide a special fund therefor," approved March twenty-seventh, eighteen hundred and seventy-two, by serving a notice of that fact on the secretary or president of said board of directors.

Offices declared vacant.

SEC. 3. As soon as the said "board of directors" of the Napa state asylum for the insane shall receive the notification referred to in the preceding section of this act, their offices, and also those of all persons receiving appointments by, through, or under them, shall become vacant, and their functions as a board and as directors, officers, and employees shall cease to exist.

Directors to turn over books and property.

SEC. 4. Upon receiving the said notification, it shall be the duty of the said "board of directors," their secretary and treasurer, medical superintendent, officers, and employees, to prepare a list of all books, papers, moneys, property, and effects of every kind and nature whatever belonging to the Napa state asylum for the insane, or in their possession, or under their control, and deliver the said list, together with the articles enumerated therein, upon the order of the president of the board of trustees created by this act, taking duplicate receipts therefor, and filing one with the state board of examiners.

Trustees to complete buildings.

SEC. 5. The trustees created under this act shall, as soon as funds are provided by the legislature, cause the buildings of the Napa state asylum for the insane to be completed, and the grounds and premises to be improved, under plans now existing, as soon as practicable; provided, that such alterations as

will reduce the cost of construction of the said asylum may be made by said board of trustees; but no contracts must be entered into or liabilities incurred beyond the amount appropriated by the legislature.

Trustees not to be interested parties.

SEC. 6. The trustees and other officers shall have no interest, direct or indirect, in the furnishing of any building materials, or in any contract for the same, or in any contract for labor in finishing said buildings, or improving said grounds or premises, nor in any contract for labor, material, or supplies for the maintenance thereof.

Powers and duties of trustees.

SEC. 7. The board of trustees created under this act shall be known by the name and style of the "board of trustees of the Napa state asylum for the insane," and by that name they and their successors shall be known in law, may receive, take, and hold property, both real and personal, in trust for the state, and for the use and benefit of said asylum. They shall have power to govern, manage, and administer the affairs of said asylum, and make and adopt by-laws for their government and the government of the asylum. They shall appoint all officers and employees of said asylum, prescribe their duties, and remove them when, in their judgment, the good of the public service requires it. They shall cause to be kept a full and correct record of their proceedings, which shall be open at all times to the inspection of any citizen desiring to examine the same. They shall hold stated meetings at the asylum monthly, and a majority of the board shall constitute a quorum for the transaction of business. They shall keep themselves constantly advised of all items of labor and expense, and the condition of the buildings and property of the asylum. They shall submit to the governor biennially, on or before the first day of September next preceding the regular session of the legislature, a report showing the receipts and expenditures, the general condition of the asylum, the number of patients under treatment during the two preceding years, and such other matters touching the general affairs of the asylum as they may deem advisable.

Trustees to appoint resident and assistant physicians—Salaries and qualifications of physicians.

SEC. 8. The board of trustees shall appoint a resident physician and an assistant physician, each of whom shall hold office for four years, and until his successor is elected and qualified. The salary of the resident physician shall be three thousand dollars per annum, and of the assistant physician two thousand dollars per annum; and each of them and their families shall be furnished room, household furniture, provisions, fuel, and lights, at and from the supplies of the asylum. Both the resident and assistant physicians shall reside at the asylum; shall be well educated and experienced physicians, regular graduates in medicine, and shall have practiced at least five years from the date of their respective diplomas, and shall not engage in outside practice. Their duties not specified in this act shall be fixed and prescribed in the by-laws of the board of trustees.

Trustees to elect treasurer.

SEC. 9. The board of trustees shall elect a treasurer, who shall not be of their number, and who shall hold office for two years, and until his successor is elected and qualified. The treasurer shall qualify by taking the usual oath of office, and shall give bond, with good and sufficient sureties, to be approved by the board, in a sum not less than thirty thousand dollars, payable to the people of the state of California, and conditioned for the faithful performance of his duties according to law, and for the delivery to his successor of all books, papers, vouchers, moneys, and effects held by him in virtue of his office. The

board of trustees may increase the amount of the bonds of the treasurer, and may require additional security at any time; and they may remove him. The treasurer shall act as secretary of the board of trustees, and have charge of the books and accounts of the asylum, and all matters of finance relating thereto. He shall keep accurate account of all expenditures, under appropriate headings, taking vouchers for all moneys paid out, and make a detailed statement under oath each month to the state board of examiners of the expense of the preceding month, and shall perform such other duties as the board may prescribe. His salary shall be fixed by the board of trustees, not to exceed six hundred dollars per annum.

Compensation and mileage of trustees.

SEC. 10. Each trustee shall receive as his compensation ten dollars for each meeting of the board at which he shall be present, payable out of any moneys appropriated to the use of the asylum; provided, that the sum paid to the said trustee shall not exceed one hundred and thirty dollars per annum; and provided further, that any trustee whose residence is out of the county in which said asylum is situated shall be allowed, for traveling expenses, mileage at the rate of ten cents per mile for the distance necessarily traveled in attending the monthly meeting of the board.

Resident physician to be executive officer.

SEC. 11. The resident physician shall be the executive officer of the asylum, under the regulations and by-laws of the trustees. He shall have control of the patients, prescribe or direct their treatment, adopt sanitary measures for their welfare, and discharge such as, in his opinion, have permanently recovered their reason. He shall maintain discipline among the subordinate officers and employees, and enforce obedience to the laws, rules, and regulations adopted for the government of the institution, and is empowered to discharge any employee or attendant for violation of the laws or rules of the asylum. He shall estimate quarterly, in advance, the probable expenses of the asylum, and submit the same to the board of trustees, at their last regular meeting preceding the commencement of such quarter, for their approval. And the controller of state is hereby authorized and directed to draw his warrants for the amount of such estimate, approved by the trustees, as soon as the same shall have been approved by the state board of examiners, in three equal sums, in favor of the board of trustees. And the state treasurer is authorized and directed to pay the same out of any moneys appropriated by law for the use and benefit of said asylum. He shall estimate and report to the trustees the amount, kind, and quality of furniture and household furnishing goods, provisions, fuel, forage, clothing, and other materials required for the six months ending on the first day of May and November of each year; and the trustees shall then advertise for four successive weeks for contracts for furnishing said supplies. All contracts shall be awarded to the lowest bidder or bidders, upon their giving to the board of trustees satisfactory security for the faithful performance of the same. Necessary expenditures, other than those for provisions, fuel, forage, clothing, and furniture, and household furnishing goods, may be made by the resident physician, subject to the approval of the board.

Monthly report of physician.

SEC. 12. The resident physician shall cause accurate and careful accounts to be kept of the daily expenditures of all articles of stores and property placed in his charge, and shall, at the end of each month, submit the same to the board of trustees for their inspection; and on each daily report shall be shown the number of persons fed and lodged in the asylum, whether as officers and their families, employees or patients. A monthly report of the same tenor shall also be made to the trustees.

Pay-roll.

SEC. 13. At the end of each month the resident physician shall cause a pay-roll to be made, which shall show the name of each person employed in or about the asylum, giving the capacity in which each is employed, the time employed, the rate of salary or wages, and the amount due each. Upon receiving this roll, sworn to and certified by the resident physician and approved by the president of the board, the treasurer shall pay the persons named on the roll the sums due them, taking their receipts on the roll for the moneys received, which roll, so receipted, shall be his voucher.

Bills, how audited and paid.

SEC. 14. All bills against the asylum shall be presented to the treasurer, and be by him submitted to the board of trustees at their next regular meeting after presentation, and shall be by them audited and approved before they are paid; and no money shall be paid out by the treasurer, except as provided in the last section, unless ordered by the board, and the order entered upon their minutes.

Treasurer to report.

SEC. 15. At every stated meeting of the board the treasurer shall present a clear and detailed statement of all moneys received and paid out by him, with vouchers regularly numbered to show for the payments—the statements to classify all receipts and expenditures under appropriate and intelligible heads. He shall also present his books, and show that they are written up to date, properly posted, and the balance of cash in his hands belonging to the asylum shown.

Trustees to examine accounts.

SEC. 16. The vouchers, statements, and books of the treasurer shall be examined by the board of trustees at each stated meeting, and if found correct and kept in accordance with the provisions of this act and the by-laws, the president of the board shall give the treasurer a certificate of the fact, and cause a note of it to be made in the minutes of the board. The minutes of each meeting of the board shall be approved by the board and signed by the secretary and president.

Commitment of insane persons.

SEC. 17. The county judge of any county in this state and the probate judge of the city and county of San Francisco, shall, upon application under oath, setting forth that a person by reason of insanity is dangerous to be at large, cause such person to be brought before him, and he shall summon to appear at the same time and place two or more witnesses who well knew the accused during the time of the alleged insanity, who shall testify under oath as to conversation, manners, and general conduct upon which said charge of insanity is based; and shall, also, cause to appear before him, at the same time and place, two physicians, who shall be regular graduates in medicine, before whom the judge shall examine the charge; and if, after a careful hearing of the case and a personal examination of the alleged insane person, the said physicians shall certify on oath that the person examined is insane, and the case is of a recent or curable character, or that the said insane person is of a homicidal, suicidal, or incendiary disposition, or that from any other violent symptoms the said insane person would be dangerous to his or her own life, or the lives or property of the community in which he or she may live; and if said physicians shall also certify to the name, age, nativity, residence, occupation, length of time in this state, state last from, previous habits, premonitory symptoms, apparent cause and class of insanity, duration of the disease and present condition as nearly as can be ascertained by inquiry and examination; and if the judge shall be satisfied that the facts revealed in the examination establish the existence of the

insanity of the person accused, and that it is of a recent or curable nature, or of a homicidal, suicidal, or incendiary character, or that from the violence of the symptoms the said insane person would be dangerous to his or her own life, or to the lives or property of others, if at large, he shall direct the sheriff of the county, or some suitable person, to convey to and place in charge of the officers of the insane asylum of this state to which the order is directed, such insane person, and shall transmit a copy of the complaint and commitment, and physicians' certificate, which shall always be in the form as furnished to the courts by the resident physician of said asylum; and the person taking such insane person to the insane asylum shall be allowed therefor the same fees as are allowed by law to the sheriff in such cases, to be paid in like manner. And the physicians attending the examination aforesaid shall be allowed, by the board of supervisors of the county in which the examination is had, five dollars each, unless they are otherwise paid.

Idiots and imbeciles.

SEC. 18. No case of idiocy, imbecility, harmless, chronic, mental unsoundness, or acute mania a potu shall be committed to this asylum; and whenever in the opinion of the resident physician, after a careful examination of the case of any person committed, it shall be satisfactorily ascertained by him that the party had been unlawfully committed, and that he or she comes under the rule of exemptions provided for in this section, he shall have the authority to discharge such person so unlawfully committed, and return him or her to the county from which committed, at the expense of such county.

Patients to pay their expenses when possessed of means.

SEC. 19. The judge shall inquire into the ability of insane persons committed by him to the asylum, to bear the actual charges and expenses for the time that such person may remain in the asylum. In case an insane person committed to the asylum under the provisions of this act shall be possessed of real or personal property sufficient to pay such charges and expenses, the judge shall appoint a guardian for such person, who shall be subject to all the provisions of the general laws of this state in relation to guardians, as far as the same are applicable; and when there is not sufficient money in the hands of the guardian, the judge may order a sale of property of such insane person, or so much thereof as may be necessary, and from the proceeds of such sale the guardian shall pay to the board of trustees the sum fixed upon by them each month, quarterly in advance, for the maintenance of such ward; and he also shall, out of the proceeds of such sale, or such other funds as he may have belonging to such ward, pay for such clothing as the resident physician shall, from time to time, furnish such insane person; and he shall give a bond, with good and sufficient sureties, payable to the board of trustees, and approved by the judge, for the faithful performance of the duties required of him by this act, as long as the property of his insane ward is sufficient for the purpose. Indigent insane persons having kindred of degree of husband or wife, father, mother, or children, living within this state, of sufficient ability, said kindred shall support such indigent insane person to the extent prescribed for paying patients. The board of trustees shall furnish such blank bonds as are required by this section, to the several county judges in this state, and to the probate judge in the city and county of San Francisco. A breach of any bond provided for in this act may be prosecuted in the district court of any county in this state in which any one of the obligors may reside, and the same shall be prosecuted by the district attorney of the county in which the action shall be brought, and shall be conducted throughout, and the judgment enforced, as in a civil action for the recovery of a debt. Should there remain in the hands of the board of trustees

or their treasurer, at the time any insane person is discharged, any money unexpended, so paid by the guardian or kindred, the same shall be refunded; provided, that the board of trustees shall not be required to refund any money for a fraction of a month; but upon the death of any insane person, after paying the ordinary burial expenses, the remainder of any moneys received from the guardian, or on deposit with the board of trustees or their treasurer, shall be refunded to the person or persons thereto entitled, on demand. Any moneys found on the person of any insane person at the time of arrest shall be certified to by the judge, and sent with such person to the asylum, there to be delivered to the treasurer, to be applied to payment of the expenses of such person while in the asylum; but upon the recovery of such insane person, all sums shall be returned to him when discharged from the asylum. The kindred or friends of an inmate of the asylum may receive such inmate therefrom, on their giving satisfactory evidence to the judge of the court issuing the commitment, that they or any of them are capable and suited to take care of, and give proper care to such insane person, and give protection against any of his acts as an insane person. If such satisfactory evidence appear to the judge, he may issue an order, directed to the trustees of the asylum, for the removal of such person; but the trustees shall reject all other orders or applications for the release or removal of any insane person, except the order of a court or judge on proceeding in habeas corpus; and if, after such removal, it is brought to the knowledge of the judge, by verified statement, that the person thus removed is not cared for properly, or is dangerous to persons or property, by reason of such want of care, he may order such person returned to the asylum.

Non-residents and temporary patients.

SEC. 20. Non-residents of this state, conveyed or coming herein while insane, shall not be committed to or supported in the Napa state asylum for the insane; but this prohibition shall not prevent the commitment to and temporary care in said asylum of persons stricken with insanity while traveling or temporarily sojourning in the state; or sailors attacked with insanity upon the high seas, and first arriving thereafter in some port within this state.

Transfer of patients.

SEC. 21. Until the Napa state asylum for the insane shall be occupied to its entire capacity, the judges who are authorized herein to commit insane persons may order all persons thereafter by them duly examined and declared insane to the Napa state asylum; but the county judges of this state, or the probate judge of the city and county of San Francisco, may order the transfer of any insane person committed from their respective counties from one asylum to the other, upon the joint recommendation and consent of the resident physicians of each, the cost of such transfer to be paid by the guardian or friends of the patient transferred.

Proceedings against directors and employees.

SEC. 22. An act entitled "An Act to provide further accommodation for the insane of the State of California, and to provide a special fund therefor," approved March twenty-seventh, eighteen hundred and seventy-two, is hereby continued in force so far only as the same gives or creates a right on the part of the people of this state to proceed against the directors and employees mentioned therein, civilly or criminally, for any fraudulent or illegal acts on their part, under the alleged authority of this act; provided, that nothing herein shall be so construed as to repeal the act of March twenty-fourth, eighteen hundred and seventy-four, entitled "An Act to provide for the construction of the Napa state asylum for the insane, and for other purposes," or any part thereof.

SEC. 23. This act shall take effect from and after its passage.

An Act to appropriate four hundred and ninety-four thousand dollars to pay the valid and equitable claims against the state, incurred in building the Napa state asylum for the insane, and to complete said structure, supply water therefor and improve the grounds on which it is situate.

Approved, April 1, 1876; 1875-6, 804.

[This act, besides appropriating money as indicated in the title, required the trustees to investigate all claims for indebtedness incurred by the board of directors appointed under the act of March 27, 1872.

A further sum of \$48,000 was appropriated for paying outstanding liabilities and covering deficiencies by act of April 3, 1876; 1875-6, 851.]

An Act to provide a supply of water for the Napa state asylum for the insane.

Approved April 3, 1876; 1875-6, 8-3.

[This act provided for the condemnation for the purpose of supplying water to the asylum of any springs and natural sources of water supply within a mile and a half of the asylum grounds.]

CHAPTER II.

DEAF, DUMB, AND BLIND ASYLUM.

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ARTICLE I.

GENERAL PROVISIONS.

2237. *Object of asylum.*

SEC. 2237. The deaf, dumb, and blind asylum, located in Alameda county, has for its object the education of the deaf, dumb, and blind.

2238. *Who entitled to its benefits.*

SEC. 2238. Every deaf, dumb, or blind person resident of this state, of suitable age and capacity, is entitled to an education in this asylum free of charge.

2239. *Same.*

SEC. 2239. Such persons not residents of this state are entitled to the benefits of this asylum upon paying to the treasurer thereof eighty-five dollars quarterly in advance.

2240. *Clothing and maintenance of pupils.*

SEC. 2240. If the parents or guardian of any pupil in the asylum for the deaf, dumb, and blind, shall be unable to clothe such child, the parent or guardian may testify to such inability before the judge of the county wherein he or she is resident, and if said judge is satisfied that the parent or guardian is not able to provide suitable clothing for the child, he shall issue a certificate to that effect; and, upon presentation of such certificate, it shall be the duty of the directors of said asylum to clothe the child, the expenses to be paid out of appropriations made for the support of the asylum. All pupils in the asylum shall be maintained at the expense of the state. [*Amendment, approved March 18, 1874; Amendments 1873-4, 115; took effect from passage.*^(a)]

2241. *Blindness and deafness defined.*

SEC. 2241. Inability by reason of defective sight to read ordinary printed matter is blindness, and inability to hear ordinary conversation is deafness, within the meaning of this chapter.

(a) Original section:

SEC. 2240. The pupils in the asylum are clothed and maintained at the expense of the state.

2242. Geological cabinet.

SEC. 2242. The state geologist and regents of the university will make up from duplicate specimens under their control a geological cabinet for the use of the asylum.

2243. Salaries, how paid.

SEC. 2243. The salaries mentioned in this chapter must be paid monthly out of the moneys appropriated for the support of the asylum.

2244. Approval and filing of official bonds.

SEC. 2244. The official bonds required by the provisions of this chapter must be approved by the board, and filed and recorded in the office of the secretary of state.

ARTICLE II.

BOARD OF DIRECTORS.

2254. Under control of board of directors.

SEC. 2254. The asylum is under the management and control of a board of directors, consisting of five persons, appointed and holding their offices as provided in Title I of Part III of this Code. [See ante, 368, 369.]

2255. Powers and duties of board.

SEC. 2255. The powers and duties of the board are as follows:

1. To make by-laws not inconsistent with the laws of the state, for their own government, and the government of the asylum;
2. To elect the principal teacher;
3. To elect a treasurer, who shall not be a member of the board of directors;
4. To elect a physician for the asylum for the term of two years, who shall not be a member of the board of directors;
5. To remove, at pleasure, any teacher or employee;
6. To fix the compensation of teachers and employees;
7. To make diligent inquiry into the departments of labor and expense, the conditions of the asylum, and its prosperity;
8. To hold stated meetings at the asylum at least once in every three months;
9. To keep a record of their proceedings;
10. To report to the governor a statement of the receipts and expenditures, the condition of the asylum, the number of pupils, and of such other matters touching the duties of the board as they may deem advisable. [Amendment, approved March 30, 1874; Amendments 1873-4, 36; took effect July 6, 1874.^(a)

An Act to confer certain powers upon the directors of the deaf, dumb, and blind asylum.

Approved April 1, 1876; 1875-6, 686.

Directors to invest money.

SECTION 1. The directors of the deaf and dumb and blind asylum are hereby authorized and empowered to take, receive, manage and invest all moneys and property heretofore or hereafter bequeathed or donated to the said asylum, in accordance with the wishes of the testator or donor, or if no conditions are attached to the bequests or donations, to invest such money or proceeds of property for the best interests of the asylum.

SEC. 2. This act shall take effect on and after its passage.

2256. Approval of estimates and drawing moneys appropriated.

SEC. 2256. If the board approve the estimates made under the provisions of section 2268, it must notify the controller of state, who must draw his warrant

(a) The original section had nine subdivisions, board of directors" in the third. In the last subdivision it had the word "is" instead of "they may and the words "who shall not be a member of the deem."

for the amount estimated, in three equal sums, payable to the board monthly, out of any moneys in the state treasury appropriated for the use of the asylum.

2257. *Directors to receive no salary.*

SEC. 2257. The directors receive no compensation.

ARTICLE III.

PRINCIPAL TEACHER.

2267. *Qualifications.*

SEC. 2267. The principal teacher must have not less than three years' experience in the art of teaching the deaf, dumb, and blind.

2268. *Powers and duties.*

SEC. 2268. He is the chief executive officer of the asylum, with powers and duties as follows:

1. To superintend the grounds, buildings, and property of the asylum;
2. With the consent of the board of directors, to fix the number of and appoint and remove the assistant teachers and employees;
3. To prescribe and enforce the performance of the duties of the assistant teachers and employees;
4. To control the pupils and prescribe and enforce a system of instruction;
5. To reside at the asylum;
6. To keep a daily record of his official acts in the manner prescribed by the by-laws;
7. To estimate quarterly in advance the expenses of the institution, and report such estimate to the board of directors;
8. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible report a statement thereof and of the condition of the asylum to the board of directors.

2269. *Salary.*

SEC. 2269. His annual salary must not exceed three thousand dollars.

2270. *Bond.*

SEC. 2270. He must execute an official bond in the sum of five thousand dollars.

ARTICLE IV.

TREASURER.

2280. *Duties of.*

SEC. 2280. It is the duty of the treasurer:

1. To act as secretary of the board of directors;
2. To keep the accounts of the board and of the receipts, expenditures, assets and liabilities of the asylum;
3. To report quarterly to the board a statement under oath of the receipts and expenditures of the preceding quarter;
4. To perform such other duties as may be required of him by the by-laws or board of directors.

2281. *Salary.*

SEC. 2281. The annual salary of the treasurer is five hundred dollars.

2282. *Bond.*

SEC. 2282. He must execute an official bond in the sum of ten thousand dollars.

[Appropriations to the deaf, dumb and blind asylum, and for the education and care of the indigent deaf, dumb and blind will be found in act of January 25, 1872; 1871-2, 34; April 1, 1872; 1871-2, 743; March 30, 1874; 1873-4, 898; February 15, 1876; 1875-6, 53; March 31, 1876; 1875-6, 593, 747.]

An Act to provide a supply of water for the university, and for the asylum for the deaf, dumb and blind.

Approved April 1, 1876; 1875-6, 816.

[This act provided for the condemnation for the use of the university and asylum for the deaf, dumb and blind, of any springs and natural sources of water supply within a mile and a half of the university grounds.]

CHAPTER III.

STATE LIBRARY.

2292. *Board of trustees, and term of office of.*

SEC. 2292. The state library is under the control of a board of trustees, consisting of five members, elected by the legislature in joint convention assembled, and holding their offices for the term of four years.

2293. *General powers and duties of board.*

SEC. 2293. The powers and duties of the board are as follows:

1. To make rules and regulations not inconsistent with law for their government and for the government of the library;
2. To appoint a librarian;
3. Whenever necessary to authorize the librarian to appoint an additional deputy;
4. To sell or exchange duplicate copies of books;
5. To keep in order and repair the books and property in the library;
6. To draw from the state treasury at any time all moneys therein belonging to the library fund.
7. To report to the governor biennially a statement of their transactions.

2294. *Term of office of librarian.*

SEC. 2294. The librarian holds his office for the term of four years, unless sooner removed by a unanimous vote of all the trustees.

2295. *General duties of librarian.*

SEC. 2295. It is the duty of the librarian:

1. To be in attendance at the library during office hours;
 2. To act as secretary of the board of trustees, and keep a record of their proceedings;
 3. To purchase books, maps, engravings, paintings, and furniture for the library;
 4. To number and stamp all books and maps belonging to the library, and to keep a catalogue thereof;
 5. To have bound all books and papers that require binding;
 6. To keep a register of all books and property added to the library, and of the cost thereof;
 7. To keep a register of all books taken from the library;
 8. To establish and maintain a system of domestic and foreign exchange of books, and to obtain from the secretary of state such numbers of all state publications as may be sufficient to meet the demands of the system established.
- [Amendment, approved March 30, 1874; Amendments 1873-4, 37; took effect July 6, 1874.^(a)

2296. *Who may take books.*

SEC. 2296. Books may be taken from the library by the members of the legislature during the sessions thereof, and by other state officers at any time.

(a) The original section did not have the eighth subdivision.

2297. *Books taken by members of legislature, when to be returned—Duties of controller in relation to.*

SEC. 2297. Books taken by members of the legislature must be returned at the close of the session; and before the controller draws his warrant in favor of any member of the legislature for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto.

2298. *Books taken by state officers to be returned, or salary not to be paid.*

SEC. 2298. The controller, if notified by the librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not draw his warrant for the salary of such officer until the return is made, or three times the value of the books, or of any injuries thereto, has been paid to the librarian.

2299. *Liability for injuries to books.*

SEC. 2299. Every person who injures or fails to return any book taken is liable to the librarian in three times the value thereof.

2300. *Library fund.*

SEC. 2300. The state library fund consists of the fees collected and paid into the state treasury by the secretary of state and surveyor-general. [*Amendment, approved March 30, 1874; Amendments 1873-4, 38; took effect from passage.*]^(a)

2301. *Library, time to be kept open.*

SEC. 2301. During the session of the legislature and of the supreme court, the library must be kept open every day from nine o'clock A. M. until nine o'clock P. M., and at other times during such hours as the trustees may direct.

2302. *Salary of librarian.*

SEC. 2302. The annual salary of the librarian is three thousand dollars.

2303. *Salary of deputies.*

SEC. 2303. The annual salary of each deputy is eighteen hundred dollars.

2304. *Bond of librarian.*

SEC. 2304. The librarian must execute an official bond in the sum of three thousand dollars.

2305. *When this chapter takes effect.*

SEC. 2305. This chapter shall be in force and effect from and after the first day of May, eighteen hundred and seventy-two.

An Act to provide for the establishment of a cabinet department in the state library.

Approved April 1, 1872; 1871-2, 824.

Librarian to arrange cabinet.

SECTION 1. It shall be the duty of the state librarian to receive, arrange and properly display, and take charge of, in the state library, the minerals, precious metals, mineralogical, geological and fossiliferous specimens and precious stones hereinafter mentioned and referred to, or which may hereafter become the property of the state by purchase or by presentation.

Purchase of cabinet.

SEC. 2. The governor shall appoint three suitable and disinterested persons, who shall act without compensation, and shall examine and appraise the cabinet of minerals, precious metals and stones, and various specimens composing the cabinet belonging to J. M. Frey, of the city of Sacramento; and, upon their making report to the governor to the effect that the said cabinet is fully worth the sum of thirteen thousand dollars, the state shall become the purchaser and

(a) The original section did not have the words "and surveyor-general."

owner of the said cabinet; provided, that if said report shall not recommend the said purchase, it shall not be made.

Appropriation.

SEC. 3. The sum of thirteen thousand dollars is hereby appropriated out of any unappropriated money in the general fund to purchase the said cabinet.

SEC. 4. This act shall take effect from and after its passage.

CHAPTER IV.

SUPREME COURT LIBRARY.

2313. *Who may use.*

SEC. 2313. This library is for the use of the justices and counselors at law of the supreme court.

2314. *Librarian and his duties.*

SEC. 2314. The secretary of the supreme court, under the supervision of the court, is the librarian, and responsible for the safe keeping of the books. Before used he must mark and number the volumes, and enter them in a catalogue kept in the library.

2315. *Who may take books.*

SEC. 2315. Books may be taken from this library by the justices of the supreme court. At the request of a counselor of the court, the bailiff must take from the library to the court-room books for use in the argument of any cause.

2316. *Fund for support of.*

SEC. 2316. The supreme court library fund consists of fees collected by the clerk of the court, as provided in section 753 of this code, and is under the control of the court. Upon its order the controller must, without the approval of any board, draw his warrant upon the treasurer for the amount specified, and in favor of the person designated in such order, which warrant must be paid out of such fund.

CHAPTER V.

OTHER PUBLIC INSTITUTIONS.

2326. *State agricultural society.*

SEC. 2326. The powers, duties, privileges, and rights of the California state agricultural society are fixed by "An Act to incorporate the state agricultural society, and to appropriate money for its support," approved May thirteenth, eighteen hundred and fifty-four, and the acts supplemental thereto, approved March twelfth, eighteen hundred and sixty-three, and April thirteenth, eighteen hundred and sixty-three. [See post, 15,001.]

2327. *University of California—Normal school.*

SEC. 2327. The control and management of the university of California and the state normal school are provided for in Title III of Part III of this Code. [See ante, 1385 and 1487.]

2328. *State prison.*

SEC. 2328. The control and management of the state prison is provided for in Part III of the Penal Code. [See post, 14,573.]

TITLE VI.

Public Ways.

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CHAPTER I.

PUBLIC WATERS.

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ARTICLE I.

GENERAL PROVISIONS RESPECTING PUBLIC WATERS AND OBSTRUCTIONS THEREIN.

2348. *What waters are public ways.*

SEC. 2348. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and of such transportation.

2349. *Certain streams and waters declared navigable, and are public ways.*

SEC. 2349. The following streams and waters are declared public ways:

So much of a slough as lies between Simon's canal, in the town of Alviso, and the bay of San Francisco.

Petaluma river, from its mouth to a distance one third of one mile above Washington street, in the city of Petaluma.

The Sonoma river, between its mouth and a point opposite Fowler's hotel, in the town of San Luis.

The Napa river, between its mouth and the toll bridge.

The Suisun river, between its mouth and the town of Suisun embarcadero.

The Sacramento river, between its mouth and the mouth of Middle creek.

Feather river, between its mouth and a point fifty feet below the bridge crossing Feather river first above the mouth of the Yuba river.

The Yuba river, between its mouth and a point at the mouth of the slough at the foot of F street, in the city of Marysville.

The San Joaquin river, between its mouth and Sycamore point.

[See act of February 21, 1872, at end of this section.]

The Stockton slough, between its mouth and the west line of El Dorado street, in Stockton.

The Mokelumne river, between its mouth and the first falls.

The Tuolumne river, between its mouth and Dickinson's ferry.

Deer creek, between the house of Peter Lassen and its mouth.

Big river, three miles from its mouth.

Noyo river, three miles from its mouth.

Albion river, three miles from its mouth.

San Antonio creek, in the county of Alameda, from its mouth to the old embarcadero of San Antonio.

The Arroyo del Medo, in the county of Santa Clara, from its mouth to the upper line of the town of New Haven.

Mission creek, in the county of San Francisco.

Islais creek, in the county of San Francisco, from Franconia landing, near Bay View turnpike, to its outlet into the bay of San Francisco, and thence easterly along the southerly line of Tulare street to the city water front on Massachusetts street, of the width of the channel of said creek.

That portion of Channel street, in the city of San Francisco, and lying east of and between the easterly line of Harrison street and the water front of the bay of San Francisco, the width thereof to be sixty feet from Harrison to the northeasterly line of Seventh street, and one hundred and forty feet from the northeasterly line of Seventh street to the city front.

That certain creek running through tide land survey numbered sixty-eight, and swamp and overflowed land survey numbered one hundred and forty-five, from its mouth to the head of tide-water therein.

San Leandro creek, from its mouth at San Francisco bay to Andrews' landing.

San Lorenzo creek, from its mouth at San Francisco bay to Roberts' landing.

Johnson's creek, from its mouth at San Francisco bay to Simpson's landing.

The north branch of Alameda creek, from its mouth to Eden landing.

[See act of March 7, 1874, at end of this section.]

San Rafael and Corte Madera creeks, in Marin county, from their mouths as far up as tide-water flows therein.

The Neuces creek, from its mouth at Suisun bay to a point one half mile above the warehouse of George P. Loucks.

Diablo creek, from its junction with the Neuces to a point opposite the warehouse of Frank Such, in Contra Costa county.

The Arroyo de San Antonio, or Keyes' creek, in Marin county, from its mouth at Tomales bay to the warehouses on the point at Keyes' embarcadero.

[See act of March 24, 1874, at end of this section.]

All the streams and sloughs emptying into Elk river, and all streams and sloughs south of Eureka, in Humboldt county, which are now or at any time have been used for the purpose of floating logs of timber, and all the sloughs south of Humboldt point, in said county, that at high water have a depth of two feet of water and wide enough to float and admit a boat carrying five tons or more freight.

Novato creek, or estuary, in Marin county, from its mouth to Sweetzer's landing.

Salinas river and Elkhorn slough, or Estero Viejo, in Monterey county, from its mouth as far up as tide-water flows.

An Act declaring the San Joaquin river and the Stockton slough navigable from and to certain points herein named.

Approved February 21, 1872; 1871-2, 117.

San Joaquin river and Stockton slough.

SECTION 1. The San Joaquin river, between its mouth and the location of the San Joaquin valley railroad bridge, and the Stockton slough, between its mouth and the west line of El Dorado street in Stockton, are hereby declared navigable streams.

SEC. 2. All acts and parts of acts, in so far as they conflict with this act, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

An Act declaring a certain creek in Washington township, Alameda county, navigable.

Approved March 8, 1872; 1871-2, 307.

Creek and Warm Springs in Alameda county.

SECTION 1. It is hereby declared that a certain creek in the township of Washington, Alameda county, California, running up to Warm Springs landing, and connecting the waters of the bay of San Francisco with said landing, is navigable, and the same shall be kept free and open for the purposes of navigation forever.

SEC. 2. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall take effect immediately.

An Act to declare Lake Earl in Del Norte county navigable.

Approved February 4, 1874; 1873-4, 59.

Lake Earl in Del Norte county.

SECTION 1. Lake Earl, in Del Norte county and State of California, is hereby made and declared navigable.

SEC. 2. This act shall take effect and be in force from and after its passage.

An Act declaring Alameda creek in the county of Alameda, a navigable stream, and providing for the removal of obstructions therefrom.

Approved March 7, 1874; 1873-4, 308.

Alameda creek.

SECTION 1. Alameda creek, from its mouth on the bay of San Francisco to the northwesterly line of Mrs. E. T. Randall's place, is hereby declared a navigable stream.

Removal of obstructions.

SEC. 2. Whenever it shall be satisfactorily shown by petition, or otherwise, to the board of supervisors of Alameda county, that by reason of obstructions in the channel or bed, said creek is liable to overflow its banks and damage the land on either side thereof, it shall be their duty to cause said obstructions to be forthwith removed.

How done.

SEC. 3. The removal of said obstructions may be done under the supervision of the road commissioner of the township where said creek is situated, or by a board of commissioners appointed by said board of supervisors. Said commissioner or commissioners are duly authorized to remove said obstructions in any manner that may best accomplish the purpose; provided, that in no event shall the growing timber on either bank of said creek be injured or destroyed in the prosecution of said work.

Expenses.

SEC. 4. All expense, of whatever nature or kind, necessarily incurred in carrying out the provisions of this act, shall be defrayed by the parties petitioning therefor. The board of supervisors may, if they deem it necessary, require of the petitioners a good and sufficient bond for the faithful performance of the work, as well as for the payment of the cost thereof. In no event shall the cost be a charge upon the county treasury.

SEC. 5. This act shall be in force from and after its passage.

An Act to amend an act entitled An Act to declare navigable the Arroyo de San Antonio, or Keyes' creek, Marin county, approved March 28, 1860.

Approved March 24, 1874; 1873-4, 564.

Arroyo de San Antonio, or Keyes' creek, in Marin county.

SECTION 1. Section one of an act entitled An Act to declare navigable the Arroyo de San Antonio, or Keyes' creek, Marin county, approved March twenty-eighth, eighteen hundred and sixty, is hereby amended so as to read as follows:

Section 1. So much of the stream known as the Arroyo de San Antonio, or Keyes' creek, in Marin county, as lies between its mouth, in Tomales bay, and a point three hundred feet above or east of the wharf, in said stream, known as the Ocean Roar wharf, is hereby declared navigable; provided, that should any bridge be erected across the Arroyo de San Antonio by any railroad company, or for highway purposes, shall be required to leave a span of at least forty feet over the deepest part of said creek for the passage of lighters and other boats plying thereon.

SEC. 2. This act shall be in force from and after its passage.

An Act declaring the "Moro Cojo" slough navigable.

Approved March 30, 1874; 1873-4, 790.

Moro Cojo slough, in Monterey county.

SECTION 1. The "Moro Cojo" slough, in the county of Monterey, is hereby declared to be a navigable stream from a point where said slough enters the Salinas river to tide-water.

SEC. 2. This act shall take effect immediately after its passage and approval by the governor.

An Act declaring Gallinas slough, or creek, in Marin county, navigable.

Approved March 25, 1876; 1875-6, 483.

Gallinas slough, in Marin county.

SECTION 1. The slough or creek situated in Marin county, known as Gallinas, or Guyanas slough or creek, is hereby declared navigable from its mouth up to the line of the Sonoma and Marin railroad.

SEC. 2. This act shall take effect from and after its passage.

2350. *Penalty for felling trees into public waters.*

SEC. 2350. Whoever cuts or causes to be cut down any tree, so that it falls into any stream or other waters declared by statute to be a public way, and does not remove it therefrom within twenty-four hours thereafter, is liable to a penalty of five dollars for each tree.

An Act to provide for the location of tow paths along the banks of navigable streams.

Approved April 1, 1872; 1871-2, 940.

Authority given.

SECTION 1. The board of supervisors of each county in the state may, when public convenience for the purpose of commerce requires it, cause to be located and opened a tow path, not exceeding ten feet in width, along the bank or banks of any navigable stream within the county.

Viewers.

SEC. 2. In order to locate and open such tow path, the same proceedings in regard to petition, viewers, etc., shall be taken as are now by law required to be taken in the respective counties of this state for the purpose of locating and opening public roads and highways.

Water frontage.

SEC. 3. The owner or owners of any land over which a tow path shall be located and opened, shall not be deprived of the water frontage nor of the free

use and enjoyment of any land so located, subject only to the right of the public to use the same for the purposes of commerce.

Fences.

SEC. 4. It shall not be necessary to construct or maintain fences on either side of any tow path so located, but the board of supervisors may make all necessary rules and regulations for the government and management of tow paths, and may provide for the erection of gates thereon and for the full and complete protection of the property through which the same passes.

SEC. 5. This act shall take effect from and after its passage.

ARTICLE II.

NAVIGATION.

2360. *Steamers meeting.*

SEC. 2360. When steamers meet each must turn to the right, so as to pass without interference.

2361. *Landing and receiving passengers by small boat.*

SEC. 2361. When a passenger is to be landed from a steamer by means of a small boat, he must not be suffered to get into it until it is completely afloat and wholly disengaged from the steamer, except by the painter.

2362. *Lines used for landing not to be drawn by machinery.*

SEC. 2362. No line used for the purpose of landing or receiving passengers must be attached in any way to the machinery of any steamer, nor must the small boat used for such purpose be hauled in by means of such machinery.

2363. *The engine to be stopped.*

SEC. 2363. During the landing and receiving of a passenger, and the going and returning of the small boat for the purpose, the engine must be stopped, and must not be put in motion, except to give sufficient force to keep the steamer in a proper direction and safe position.

2364. *Boats, oars and signals.*

SEC. 2364. In every small boat there must be kept a good and suitable pair of oars; and in the night time a signal, by means of a horn or trumpet, must be given to the steamer from the small boat, when having landed or received its passengers, it is ready to leave the shore.

2365. *Steamers overtaking.*

SEC. 2365. A steamer going in the same direction with another steamer ahead of it must not approach or pass the other within the distance of ten yards; and the steamer ahead must not be so navigated as unnecessarily to bring it within ten yards of the steamer following.

2366. *Steamers to carry signals at night.*

SEC. 2366. When any steamer is running in the night time her master must cause her to carry two conspicuous lights; one exposed near her bow and the other near her stern; the latter must be at least twenty feet above her deck.

2367. *Penalties, what amount.*

SEC. 2367. Every master or other person in charge who violates any of the provisions of the preceding seven sections, incurs a penalty of two hundred and fifty dollars for each offense.

2368. *Vessels at anchor to show lights.*

SEC. 2368. When any vessel is at anchor in the night time in any of the harbors or ports within the jurisdiction of this state, the master or other person at the time in the charge of the vessel must cause a conspicuous light shown in her rig-

ging at least twenty feet above her deck, and another light from her taffrail, under penalty of fifty dollars for every neglect.

2369. *No recovery for collision in case of neglect.*

SEC. 2369. Neither the master or owner of any vessel can recover damages for injuries to the same or to himself by a collision growing out of a non-compliance upon its part with the provisions of the preceding six sections.

2370. *Rafts on the Sacramento and San Joaquin rivers.*

SEC. 2370. Every raft of timber floated on the Sacramento or San Joaquin rivers at night must show two red lights, one at each end, and at least ten feet above the upper logs or plank of such raft, under penalty of fifty dollars for every neglect.

2371. *Vessels to carry what boats.*

SEC. 2371. Every vessel propelled by steam, navigating any waters of this state and carrying passengers, must be provided with boats as follows:

1. If of five hundred tons measurement, one first-class life boat; one row boat, twenty-five feet long by seven wide, capable of carrying fifty persons each; and at least one other good row boat;
2. If of two hundred and fifty and less than five hundred tons measurement, at least two ordinary row boats;
3. If of less than two hundred and fifty tons burden, at least one small row boat.

All which boats must be attached in such manner that they can be launched at any time for immediate use.

2372. *Penalty, what amount.*

SEC. 2372. The master and owners, and each of them, of any vessel not provided with boats as required in the preceding section, are subject to a penalty of not exceeding two hundred and fifty dollars.

2373. *Racing, penalty for.*

SEC. 2373. If the master or other person in charge of a steamer navigating any of the waters of this state and used for the conveyance of passengers, or if the engineer or other person in charge of the boiler or other apparatus for the generation of steam does, for the purpose of increasing speed or excelling any other vessel in speed, suffer to be created an undue or an unsafe quantity of steam, he is subject to a penalty of five hundred dollars.

2374. *Steamboats to wear spark catchers.*

SEC. 2374. All high-pressure steamboats navigating the Sacramento and San Joaquin rivers, or any of their tributaries above the mouth of the San Joaquin river or the city of Sacramento, must have securely attached to their chimneys metal bonnets or spark catchers.

2375. *Inspectors to supervise and direct spark catchers.*

SEC. 2375. All such bonnets or spark catchers must be constructed under the direction and supervision of the United States inspectors of steamboats for the district of San Francisco.

2376. *Compensation of inspectors.*

SEC. 2376. For each bonnet or spark catcher worn by any steamboat inspected or constructed under the direction of and certified to by the inspector, he may receive from the owner thereof ten dollars as a compensation for his services for such direction, supervision, or inspection and certificate.

2377. *Neglect of duty and penalty therefor.*

SEC. 2377. Every owner or master who navigates a steamboat without bonnets or spark catchers inspected and attached as required by the preceding three

sections, is subject to a penalty of twenty dollars for each day he navigates his boat without the same. The owner of such boat is further liable for all damage done by reason of such neglect.

2378. *Owner liable for master's or engineer's penalties.*

SEC. 2378. The owners of every steamboat are responsible for the good conduct of the master or other person in charge employed by them, and they are jointly and severally liable for any penalty incurred by the master, engineer, or other person in charge, which cannot be collected from him by due course of law, as if they were his sureties.

2379. *Penalties, how recovered.*

SEC. 2379. The penalties given by this article may be recovered by the district attorney of any county bordering on the water where the offense was committed or the penalty incurred, to whom notice is first given, and when recovered are to be equally divided between the common school and indigent sick fund of the county whose district attorney recovers the same. Any judgment recovered hereunder is a lien on the vessel against whose owners or master it is recovered.

ARTICLE III.

FLOATING LUMBER.

2389. *Definition of lumber.*

SEC. 2389. The word "lumber" is used in this article to designate all timber, whether in logs, boards, planks, or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called drift wood.

2390. *Owner may reclaim lumber.*

SEC. 2390. Whenever any lumber drifts upon any island in any of the waters of this state, or upon the bank of any such waters, the owner of the lumber may remove it on payment or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear proofs and determine the same at the expense of the owner of the lumber.

2391. *If not taken away, to be turned over to sheriff.*

SEC. 2391. If the owner of such lumber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the lumber, to the sheriff of the county, and thereafter the sheriff must dispose of the same as is required by Article IV of this chapter with regard to wrecked perishable property.

2392. *Application of proceeds when sold.*

SEC. 2392. When sold, the proceeds of the lumber must be applied, first, to the payment of the charges of sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the county judge, and on his order therefor made within one year after its receipt.

2393. *Subsequent disposition of proceeds.*

SEC. 2393. The rejection by the county judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds, the same must, by the county treasurer, be placed in the common school fund of the county.

ARTICLE IV.

WRECKS AND WRECKED PROPERTY.

2403. *Duties of officers and citizens.*

SEC. 2403. The sheriff in each county must give all possible aid and assistance to vessels stranded on its coast, and to the persons on board the same, and exert himself to save and preserve such persons, vessels, and their cargoes, and all goods and merchandise which may be cast by the sea upon the land, and to this end may employ as many persons as he may think proper. All citizens must aid the sheriff when required.

2404. *Officers, etc., entitled to salvage—Salvage not to exceed half value of property saved.*

SEC. 2404. Sheriffs and all persons employed by them or aiding in the recovery and preservation of wrecked property, are entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved; and the officer having the custody of such property must detain it until the same are paid or tendered. But the whole salvage claimed must not exceed one half of the value of the property or proceeds on which it is charged; and every agreement, order, or adjustment allowing a greater salvage is void, unless ordered and allowed by the county judge.

2405. *Owners of wrecked property may reclaim it.*

SEC. 2405. Wrecked property may be kept or reclaimed, at the time of the wreck, by the owner, consignee, or other person entitled to the possession; but if any person has a just claim for salvage and necessary expenses incurred in saving it, he must be paid before the property is reclaimed.

2406. *Sheriff to keep possession until owner found.*

SEC. 2406. The sheriff of every county in which any wrecked property is found, when no owner or other person entitled to possession appears, must take possession of it in the name of the people, cause the value thereof to be appraised by disinterested persons, and keep it in some safe place to answer the owner's claims.

2407. *Perishable property.*

SEC. 2407. If it is in a perishable state, the sheriff must apply to the county judge, upon a verified petition, for an order authorizing him to sell it. If the judge is satisfied that a sale of the property would be beneficial to the parties interested, he must make the order applied for, and the property must then be sold at public auction, at the time and in the manner specified in the order, and the proceeds, deducting the expenses of sale, as the same is settled and allowed by such judge, must be paid to the treasurer of the county.

2408. *Order for surrender to claimant.*

SEC. 2408. If, within a year after the finding, any person claims the property or its proceeds, and establishes his claim by evidence satisfactory to the county judge, such judge must make an order directing the officer in whose possession the property or its proceeds may be to deliver the same to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation.

2409. *Claimant to first give bond.*

SEC. 2409. Before making the order, the judge must require from the claimant a bond to the people, with one or more sufficient sureties, to be approved by the judge and filed with the county clerk, in a penalty double the value of the property or proceeds, conditioned for the payment of all damages that may be recovered against such claimant or his representatives, within three years after its date, by any person establishing title to the property or proceeds.

2410. *Action on bond.*

SEC. 2410. If the bond becomes forfeited, the county judge, upon the application, supported by proof, of the person entitled to the benefit of it, must make an order for its prosecution for such person's benefit, and at his risk and expense.

2411. *Owner may sue, although claim rejected.*

SEC. 2411. The rejection by the judge of any claim does not preclude the claimant from maintaining an action for the recovery of such property or its proceeds against the officer. If the plaintiff in any such action prevails, there must be deducted from the damages, in addition to salvage and expenses, all the defendant's costs.

2412. *Salvage to be stated in writing.*

SEC. 2412. Every officer to whom an order for the delivery of wrecked property or the payment of its proceeds is directed, must present to the claimant exhibiting it a written statement of the claims for salvage and expenses. If the claimant refuses to allow such amount, it must be adjusted as hereinafter provided.

2413. *Proceedings to settle disputed claims to salvage.*

SEC. 2413. If in any case the amount of salvage and expenses are not settled by agreement, the county court of the county, on the application of the owner or consignee of the property, or the master or supercargo having charge thereof at the time of the wreck, or of a claimant having an order therefor, or of a person claiming salvage or expenses, must determine the same in a summary way, either by itself hearing the allegations and proofs of the party, or by referring the questions to three disinterested freeholders of the county, who must have the same powers and must proceed in the same manner as referees in civil actions, and whose decisions as to the whole amount and as to the sums to be paid to each person interested must be entered as the judgment of the county court.

2414. *Costs of contest.*

SEC. 2414. The fees and expenses of the contest must be paid by the person upon whose application it was had, and are a charge on the property saved. Each referee is entitled to such per diem and expenses as the county judge may deem just.

2415. *Wrecked property not claimed to be sold.*

SEC. 2415. If within a year after saving wrecked property no claimant of the property or its proceeds appears, or if within three months after a claim the salvage and expenses have not been paid, or a suit for the recovery of the property or its proceeds has not been commenced, the officer in whose custody it may be must sell it at public auction, if not already sold, and pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this state, for the benefit of the parties interested; but in no case must any deduction of salvage and expenses be made unless the amount has been determined by the county court of the county, a copy of whose order and of the evidence in support thereof must be transmitted by the judge to the controller. If any money paid to a county treasurer under section 2407 remains in his hands more than a year after it has been paid to him, the same must be paid into the state treasury.

2416. *Notice of sale.*

SEC. 2416. Public notice of every sale of wrecked property, under the provisions of this chapter, must be published by the officer making the sale for at least two weeks in succession in one or more newspapers printed in the county,

or if none is printed therein, then by written or printed notices in three of the most public places in such county, posted up at least fifteen days previous to such sale. Every notice must state the time and place of the sale, and contain a particular description of the property to be sold.

2417. *Notice of wrecked property.*

SEC. 2417. Every sheriff into whose possession any wrecked property comes must immediately thereafter publish, for at least two weeks in succession, in one or more of the newspapers printed in this state, a notice directed to all parties interested, giving a minute description of the property, and of every bale, box, case, piece, or parcel thereof, and of the marks, brands, letters, and figures on each, and stating where the same then is and its actual condition, and the name, if known, of the vessel from which it came, her master and supercargo, and the place where such vessel then is, and her actual condition.

2418. *Expense of notice.*

SEC. 2418. The expense of publishing notices under the provisions of this chapter is a charge upon the property or proceeds to which it relates.

ARTICLE V.

PILOTS AND PILOT COMMISSIONERS.

2429. *Qualifications of pilots.*

SEC. 2429. No person must be appointed a pilot unless he is an American citizen, over the age of twenty-one years, with a practical knowledge of the management of sailing vessels and steamboats, and of the tides, soundings, bearings, and distances of the several shoals, bars, rocks, points of land, light-houses, and fog signals of the ports and harbors for which he is appointed, of good moral character, and temperate, with the skill and ability necessary to discharge the duties of pilot.

2430. *Commissions and license.*

SEC. 2430. Pilots appointed by commissioners must be carefully examined as to their qualifications, and if found to be qualified and worthy, must receive licenses as pilots for the term of twelve months. Whenever the commissioners have cause for withholding a renewal of such license, notice thereof must be given to such pilot by the commissioners ten days prior to the expiration of his license.

2431. *Pilots to take official oath and give bond.*

SEC. 2431. Every pilot must execute an official bond in the sum of five thousand dollars, to be approved by the officer or board appointing him. The bonds of pilots appointed by commissioners must be filed with such commissioners.

2432. *Vessel, owner, etc., liable for pilotage.*

SEC. 2432. All vessels, their tackle, apparel, and furniture, and the master and owners thereof, are jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction.

2433. *Owners to compensate pilots for loss.*

SEC. 2433. If any pilot, in endeavoring to assist or relieve any vessel in distress, suffers loss or damage in his boats, sails, tackle, rigging, or appurtenances, the master, owner, or consignee of such vessel must pay the value of such loss or damage, to be ascertained by the commissioners.

2434. *Pilot to show commission or license, when.*

SEC. 2434. Every pilot, on boarding a vessel, when required by the master thereof, must exhibit his commission or license as pilot. A refusal so to do sub

jects him to a forfeiture of his commission or license, and to a recovery of fifty dollars on his bond in a suit instituted for that purpose by the authority appointing him.

2435. *Pilots carried to sea or detained.*

SEC. 2435. Every pilot carried to sea against his will, or unnecessarily detained on board of a vessel when a pilot boat is in attendance to receive him, is entitled to receive the sum of eight dollars per day while necessarily absent or detained, not to exceed in the aggregate the sum of one thousand dollars in any one case, which sum may be recovered by action against the master or owner of the vessel so taking him away.

2436. *Pilots for ports other than San Francisco, Mare island, Benicia, and Humboldt bay.*

SEC. 2436. Pilots for all the ports in this state, other than San Francisco, Mare island, Benicia, and Humboldt bay, are governed by the following regulations:

1. They must keep, for the purpose of piloting, at least one boat for every six pilots, in good condition, and seaworthy, sufficiently large to cruise in heavy weather, to be exclusively used as a pilot boat;

2. They must cruise at least ten marine miles seaward from the headlands at the entrance of the port;

3. They shall receive for piloting every vessel into or out of port the sum of eight dollars per foot draught;

4. When the person commanding any vessel refuses to take a pilot, the pilot first offering his services is entitled to half pilotage;

5. For incompetency, neglect of duty, or other good cause, the governor may suspend or remove any pilot appointed by him;

6. They must strictly observe and obey all legally established quarantine regulations.

2437. *Further duties of pilots.*

SEC. 2437. When cruising off or standing out to sea, pilots must go to a vessel nearest to shore, or in the most distress, under a penalty of one hundred dollars; for refusing to go on board a vessel when required, a like penalty of one hundred dollars may be imposed; in either case, upon conviction, the pilot may be suspended or expelled, at the discretion of the commissioners.

2438. *Violating regulations.*

SEC. 2438. For every violation of the duties and regulations herein specified, the pilot so violating is liable on his official bond to the party aggrieved to the amount of the damages sustained.

2439. *Piloting vessels without license.*

SEC. 2439. Any person not the master or owner, and not holding a commission or license as a pilot, who pilots any vessel into or out of any harbor or port of this state for which there are commissioned or licensed pilots, must be punished therefor as provided in the Penal Code, section 379, and must pay to the pilot entitled to pilot such vessel the amount of pilotage or towage collected by him.

2440. *Pilot commissioners for San Francisco, Mare island, and Benicia, how appointed.*

SEC. 2440. There must be appointed by the governor, by and with the advice of the senate, three experienced and competent shipmasters or nautical men, citizens of the United States, and residents in either of the cities of San Francisco, Oakland, Vallejo, or Benicia, or of the towns of Brooklyn or Alameda, a board of pilot commissioners for the ports of San Francisco, Mare island, and Benicia.

2441. *Pilot commissioners for Humboldt bay and bar, how appointed.*

SEC. 2441. There must be appointed by the governor three pilot commissioners for Humboldt bay and bar. Two of the persons so appointed must be resident business men and the other a shipmaster or nautical man, and a resident of Eureka, Humboldt county, who must constitute a board of pilot commissioners for Humboldt bay and bar.

2442. *Term of office.*

SEC. 2442. The commissioners hold their offices during the pleasure of the power appointing them, not exceeding four years from the date of their commissions.

2443. *Boards to organize, and meetings.*

SEC. 2443. The commissioners must organize as boards respectively by the election of presidents, secretaries, and treasurers. They must provide for themselves offices, in which they must meet as follows: The "San Francisco board" must meet once a month in the city of San Francisco, and the "Humboldt board" must meet at Eureka on the first Mondays in January, April, July, and October.

2444. *Powers of president.*

SEC. 2444. The president of each board is authorized to administer oaths in regard to any matter properly before it and to issue subpoenas in like cases for witnesses. A witness disobeying such subpoena served on him must pay to the board one hundred dollars, for which judgment may be recovered by the president in a civil action.

2445. *Powers of boards.*

SEC. 2445. Each board must make by-laws and rules for the government of pilots appointed by it; and may adjourn their regular meetings from time to time. The Humboldt board must hold a special meeting on notice of one member, published in a newspaper in Humboldt county five days prior to the proposed meeting. The San Francisco board may appoint a secretary and fix his compensation, not to exceed the sum of two hundred and fifty dollars per month. The secretary of the Humboldt board must be one of the members thereof.

2446. *Secretaries of boards, and records.*

SEC. 2446. The secretary of each board must keep a journal of all its proceedings and acts, and a register of all pilots appointed, their residence and date of license; and must, under order of the board, issue licenses to be signed by the president, and countersign the same. The secretary of the Humboldt board is the treasurer thereof.

2447. *Not to be interested in pilot-boats.*

SEC. 2447. Neither the commissioners nor their secretaries must have any interest in any pilot-boat or steam-tug, nor in the earnings thereof, other than for compensation as herein provided. Any one violating this section forfeits his office.

ARTICLE VI.

PILOT REGULATIONS FOR SAN FRANCISCO, MARE ISLAND, AND BENICIA.

2457. *To examine and license pilots and tug-boats.*

SEC. 2457. The board of commissioners must examine and license, in the manner prescribed, not less than fifteen nor more than twenty pilots for the port of San Francisco, and not more than two pilots for the ports of Mare island, Vallejo, and Benicia, exclusive of steam-tug pilots. They must also license for the same ports pilots solely for the purpose of being attached to

steam-tug pilot-boats, capable of towing and piloting vessels of such registered tonnage as may be specified in the license. Whenever a steam-tug pilot-boat is licensed, the license must state whether it is limited or unlimited. If it is limited to a class of vessels, it must specify the maximum of tons registered measurement of vessels it is licensed to tow or pilot.

2458. *Steam tug-boat license.*

SEC. 2458. Pilots must at all times keep for their exclusive use boats of such description and good condition as directed by the board. Whenever a pilot is licensed to be attached to a steam-tug pilot-boat, the license must contain the name of the pilot and the name and steam power of such boat; and in all cases, before the issuing of the license, satisfactory proof must be made to the board that such steam-tug pilot-boat is of sufficient power to tow vessels of the tonnage for which it is licensed to and from sea, and to and from San Francisco, Vallejo, Mare island, and Benicia, at ordinary times. Such steam-tug pilot-boats must have all the appliances needed for the service for which they are to be employed, and must have the certificate of the United States inspector of steamboats. A steam-tug pilot can only act as pilot for and with the steam-tug for which he is licensed, and for piloting and towing vessels of such tonnage, registered measurement, as may be named in his license. If any steam-tug pilot-boat undertakes to tow or pilot any vessel of a registered tonnage beyond that for which it is licensed, such steam-tug pilot-boat, her tackle and apparel, and the pilot and owner thereof, are liable for all damages.

2459. *Duty of pilots to arrest.*

SEC. 2459. Every pilot in charge of a vessel arriving in the port or harbor of San Francisco must safely moor the vessel in such position as the master of the vessel or harbormaster may direct. He must prevent all persons (except officers of the state or federal governments, owners or consignees of the vessel or cargo, and persons admitted on the express order of the master) from boarding such vessel until she has been safely moored. To enforce the provisions of this section and other police regulations for the harbor, every pilot in charge of a vessel entering the harbor of San Francisco is authorized and empowered to arrest every one who, in opposition to the master's orders, persists in boarding such vessel, or who, having boarded her, refuses to leave on the command of such master or pilot; when so arrested he must be immediately brought before the police judge's court, or admitted to bail, as provided in the Penal Code.

2460. *To render monthly account of pilotage.*

SEC. 2460. Every pilot of the harbors of San Francisco, Mare island, Vallejo, and Benicia, must, once in each month, render to the board an account of all moneys received by him or by any other person for him or on his account, and pay five per cent. thereof to the board, in full compensation for its official services, for the services of its secretary and treasurer, and all incidental expenses.

2461. *Board may revoke license.*

SEC. 2461. The board has power summarily to suspend pilots for misconduct, inattention to their duty, intoxication, or violation of any of the rules and regulations provided by the board for the government of pilots, and to revoke the license of pilots for the causes hereinafter mentioned, upon due proof thereof, as hereinafter provided. The board must immediately suspend every pilot complained of until the complaint is investigated and decided.

2462. *Causes for revocation.*

SEC. 2462. Any pilot may be deprived of his license before its expiration for the following causes only:

1. For neglect, for thirty days after the same becomes due, as provided in the

second preceding section, to render an account to the board of pilot commissioners of all moneys received by him for pilotage;

2. For neglect for thirty days after the same becomes due, to pay over to the board the five per cent. on the pilotage money received by him;

3. For rendering to the board a false account of pilotage received;

4. For absenting himself from duty for more than one month at any one time, except upon leave granted by the board, or by reason of sickness or personal injury;

5. For refusing to exhibit his license when requested to do so by the master of any vessel he may have boarded;

6. For habitual or occasional intoxication, whether the same occurs while in charge of any vessel as pilot or in charge of a pilot-boat, or at any other time;

7. For negligently, ignorantly, or willfully running any vessel on shore, or otherwise rendering her liable to injury. Any pilot deprived of his license under this subdivision is thereafter ineligible to receive a license as pilot;

8. For willful violation of the rules and regulations adopted by the board of commissioners for the government of pilots.

2463. *Complaint against pilot to be verified, and how disposed of.*

SEC. 2463. No complaint against any pilot for any of the charges specified in the preceding section must be entertained by the board, unless it is within the knowledge of the commissioners or reduced to writing and verified, as in civil actions. When a written complaint is filed, the pilot accused must be forthwith served with a copy thereof by the secretary, and required to appear and answer within ten days thereafter. If, upon the hearing of a complaint and the testimony in relation thereto, the board adjudges the complaint well founded, and the pilot guilty of any of the acts or causes herein declared sufficient for depriving him of his license, the board must by order so declare, and forthwith revoke his license. Such order must be entered of record in the minutes by the secretary.

2464. *Decision of boards to be final.*

SEC. 2464. All the decisions of the board, touching the revocation of licenses, suspension of pilots and refusal to reappoint a pilot, as provided in the preceding section, are final and without right of review or appeal to any court of law; but the board may, in its discretion, grant a rehearing in any case for cause shown in writing, duly verified by the party affected thereby.

2465. *Certain pilotage to be agreed on.*

SEC. 2465. The pilotage inside the heads to the anchorage opposite San Francisco and about the harbor, or between the harbor of San Francisco and the ports of Mare island, Vallejo or Benicia, must be at such rates as agreed on between the parties, not to exceed five dollars per foot draught.

2466. *Rates of pilotage.*

SEC. 2466. The following are the rates of pilotage into or out of the harbor of San Francisco: Vessels under five hundred tons, five dollars per foot draught; vessels over five hundred tons, five dollars per foot draught, and four cents per ton for each and every ton of registered measurement; vessels engaged in the whaling or fishing trades, one dollar per foot draught. When a vessel is spoken and the services of a pilot are declined, one half the rates must be paid. If the vessel is inward bound, the above rates, and one half rates in this section mentioned are chargeable only when the vessel is spoken off the entrance to the harbor, and outside the bar. In all cases where inward bound vessels are not spoken until inside the bar, the rates of pilotage, and one half pilotage, must be reduced fifty per cent.

2467. Pilotage of outward bound vessels.

SEC. 2467. Any vessel in tow of a steam-tug, outward bound, or between the harbor of San Francisco and the ports of Mare island, Vallejo or Benicia, is not liable for pilotage unless a licensed pilot is actually employed. If a pilot is employed by any outward bound vessel in tow of a steam-tug not licensed, the rates of pilotage are one half the rates specified in the preceding section.

2468. Certain vessels exempt from pilotage.

SEC. 2468. All vessels coasting between San Francisco and any port in Oregon, or in Washington or Alaska territories, and all vessels coasting between ports of this state, are exempt from all charges for pilotage, unless a pilot is actually employed. A steam tug pilot-boat is in no case allowed to charge for pilotage or towage unless the service of such boat is actually accepted.

ARTICLE VII.**PILOT REGULATIONS FOR HUMBOLDT BAY AND BAR.****2476. Board to appoint and remove pilots.**

SEC. 2476. The Humboldt board may appoint for Humboldt bay and bar such number of pilots as are necessary, subject to be removed by the board at any time.

2477. To make rules to govern themselves and pilots.

SEC. 2477. The commissioners may make by-laws and rules for their own government and for the government of the pilots, and fix penalties for the breach of the same—a copy whereof they must furnish each pilot appointed. They may also suspend or revoke the licenses of pilots appointed by them, for incapacity or misconduct.

2478. Pilots to be attached to steamboats—Damages.

SEC. 2478. All pilots licensed or appointed for Humboldt bay must be attached to a steamboat well furnished and fitted for the service, having the necessary hawsers and spring lines suitable to cross and tow vessels over Humboldt bar in ordinarily rough weather. Any damage to a vessel in tow of a pilot boat, resulting from negligence or carelessness, may be recovered of the pilot boat, its owners, or the pilots in charge thereof at the time the injury occurred; they are justly and severally liable therefor.

2479. Pilot having priority.

SEC. 2479. The pilot who brings any vessel into the port has priority in piloting or towing the same out, and the master of the vessel outward bound must apply for pilotage or towage on board the pilot boat which brought the vessel in, and tender the pilotage or towage fee. Such pilot, or a suitable substitute, must immediately render the required service, and for a failure so to do forfeits his appointment. If the pilot, in bringing the vessel in, was guilty of negligence or carelessness, he thereby forfeits his right of priority.

2480. Pilotage and towage.

SEC. 2480. The following fees are collectible by the pilots of Humboldt bay:

1. For piloting vessels, eight dollars per foot draught;
2. For towage, an amount to be agreed upon between the parties.

2481. Pilot responsible for loss or detention of vessel.

SEC. 2481. If any vessel bound for Humboldt bay is lost or unnecessarily detained for want of a pilot or steam tug-boat after raising a signal for a pilot within eight miles of the bar at the entrance of the bay, the pilots may be suspended or displaced by the commissioners, and those guilty of negligence or inattention must pay to the commissioners a sum not exceeding five hundred

dollars, to be recovered in a suit by them, and are liable to the owners of the lost or detained vessel in the amount of damage resulting from such negligence or inattention. The commissioners must publish all proceedings had in such cases.

2482. *Commissioners to recover forfeitures, etc.*

SEC. 2482. The commissioners must sue for and recover all penalties and forfeitures from pilots, masters, or owners of vessels, or other persons, or from the vessels violating any of the provisions of this article. The money so collected must be paid into the county treasury of Humboldt county, for the use of the public schools, the commissioners first deducting therefrom, if sufficient, enough to defray their salaries and necessary expenses.

2483. *Compensation of commissioners.*

SEC. 2483. The commissioners must each receive the sum of four dollars per day for each day actually employed in the discharge of their duties, and all necessary expenses for stationery, lights, and fuel used in their office, which sum must be deducted from the moneys received by them before depositing the same in the county treasury.

2484. *Secretary to publish receipts.*

SEC. 2484. On the first week in January of each year the secretary of the board must cause to be published in a newspaper published in Humboldt county a full account of all the receipts and expenditures for the year previous.

2485. *Pilots to observe regulations.*

SEC. 2485. The commissioners of Humboldt bay and bar must strictly observe and enforce the following regulations:

1. A pilot absenting himself from his duty for more than two months forfeits his license;
2. Each pilot must apply for a renewal of his license ten days before the expiration thereof, otherwise it must not necessarily be renewed;
3. If a pilot becomes intoxicated while in charge of a vessel as pilot he must be suspended or dismissed and his license withdrawn.

2486. *License, how forfeited.*

SEC. 2486. Licenses of pilots are forfeited and must be withdrawn by the board of commissioners in the following cases:

1. A failure to renew his bond or sureties when required by the board;
2. Willful violation of any duty prescribed by law or a regulation of the board;
3. Negligently losing a vessel;
4. Mental derangement;
5. Habitual drunkenness.

Notice of any charge must be given to the pilot accused, and an opportunity to defend himself given before his removal.

2487. *Pilot losing vessel.*

SEC. 2487. A pilot negligently losing a vessel must not thereafter receive a license as a pilot, and is liable for all damages sustained in consequence of such neglect. If a pilot negligently runs a vessel on shore, he must receive no pilotage; and he is liable on his bond for all damages sustained.

2488. *Extra services.*

SEC. 2488. The master, owner, or consignee of any vessel to whom any pilot may have rendered, upon request of either of them, any extra service for the preservation of such vessel while in distress, must pay such pilot, in addition to his regular fees, such amount as the commissioners determine to be a reasonable and just reward, if no special agreement has been made between such master, owner, or consignee of such vessel and the pilot.

2489. Full pilotage.

SEC. 2489. A pilot boarding any vessel displaying a signal for a pilot is entitled to receive full pilotage.

2490. Further fees.

SEC. 2490. The commissioners are entitled to charge for each license to a pilot a sum not exceeding fifty dollars; and any master of a coasting vessel, being an American citizen, can, upon application to the pilot commissioners, obtain a special license for the use of such vessel only, by paying the commissioners for the same at the rate of one dollar per ton; all such vessels must be under one hundred and seventy-five tons burden.

2491. Claims against board.

SEC. 2491. All claims against the commissioners must be considered at a stated meeting, and if correct must be allowed and paid.

An Act to establish pilots and pilot regulations for the port of San Diego.

Approved March 26, 1872; 1871-2, 650.

Pilot commissioners of San Diego.

SECTION 1. It shall be the duty of the governor to appoint one citizen, resident of San Diego, as pilot commissioner. The president of the board of trustees and the president of the chamber of commerce of said city shall be ex officio pilot commissioners. The three persons named shall constitute a board of pilot commissioners, with the powers and duties as hereinafter provided.

Oath.

SEC. 2. Each commissioner shall, before entering upon his official duties, take the following oath or affirmation, which shall be indorsed on his commission, and shall be signed by him, and certified by the county judge of the county of San Diego: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of the office of pilot commissioner, without fear, favor, or affection, according to the best of my ability."

Tenure of office.

SEC. 3. The board of pilot commissioners shall hold their offices during the pleasure of the power appointing them, not exceeding four years.

Meetings, officers, rules, quorum, etc.

SEC. 4. The board of pilot commissioners shall meet at least once in each month. They shall elect one of their number president, who shall be authorized to administer oaths, and under his hand and private seal to issue subpoenas for the attendance of witnesses in all cases arising before the board under this act. A witness disobeying such subpoena shall forfeit and pay a sum not exceeding one hundred dollars, which may be sued for and recovered in a civil action, in the name of the president of the board. It shall make by-laws and rules for its own government of the pilots, not inconsistent with the laws of this state, or of the United States. A majority of such board shall constitute a quorum for the transaction of business, and may meet and adjourn from time to time, according to adjournment or appointment.

Organization of board.

SEC. 5. The commissioners may organize as a board at any time after their appointment and qualification. After their organization they shall proceed to examine and license, in the manner prescribed herein, not more than four pilots, for the port of San Diego; provided, that nothing in this section shall be so construed as to remove any pilot until his commission shall expire.

Qualification of pilots.

SEC. 6. No person shall be appointed a pilot unless he is an American citizen, over the age of twenty-one years, with a practical knowledge of the management of sailing vessels and steamboats, and of the tides, soundings, bearings, and distances of the several shoals, bars, rocks, points of land, light-house, and fog signals of the port and harbor of San Diego.

Oath and bond of pilots.

SEC. 7. Every pilot receiving a license shall, before entering on the discharge of his duties, take the oath prescribed by the constitution of this state, which shall be indorsed upon his license, signed by him, and certified by the president of the board; and shall give a bond in the sum of twenty-five hundred dollars, with two sureties, to be approved by the board and recorded in the county recorder's office of San Diego county, made payable to the State of California, and conditioned that he will faithfully perform all the duties required of him as a pilot under this act, and will observe the rules and regulations and decisions of the board. The pilots shall renew their bonds whenever the board may deem it necessary and shall so order. In all cases where a pilot shall have been deprived of his license before the expiration thereof for any of the causes hereinafter specified, it shall be the duty of the president of the board, provided a majority of the board shall instruct, to place the bond of such pilot in the hands of the attorney-general of the State of California for collection. If any amount be collected thereon, in such suit, it shall be paid to the board and shall constitute a fund out of which it shall be the duty of the board to provide rewards to encourage the relief of vessels and passengers in distress, and generally to encourage the pilots in the energetic performance of their duties.

Mooring of vessels.

SEC. 8. It shall be the duty of every pilot in charge of a vessel arriving in the harbor of San Diego to have the vessel safely moored in such a position as the master may direct.

Pilots carried to sea.

SEC. 9. Every pilot carried to sea against his will, when a pilot boat is in attendance to receive him, shall be entitled to receive the sum of eight dollars per day, while absent, which sum may be recovered from the master or owner of the vessel so taking him away; provided, the amount herein allowed to be recovered shall in no case exceed one thousand dollars.

Revocation of license.

SEC. 10. Any pilot may be deprived of his license before the expiration thereof for the following causes:

1. For refusing to exhibit his license when requested to do so by the master of any vessel he may have boarded.

2. For habitual or occasional intoxication, whether the same shall occur while in charge of a pilot boat or at any other time.

3. For negligently, ignorantly, or willfully running any vessel on shore or otherwise rendering her liable to injury; provided, that any pilot deprived of his license under this subdivision shall thereafter be ineligible to a license as a pilot under this act.

Piloting without license.

SEC. 11. Any person not being the master or owner, not holding a license as pilot, who shall pilot any vessel into or out of the harbor of San Diego shall be deemed guilty of a misdemeanor, and on conviction in any court of competent jurisdiction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding ninety days.

Pilot fees.

SEC. 12. All vessels, their tackle, apparel, and furniture, and the master and owners thereof, shall be jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction.

Rights of pilots to preference.

SEC. 13. When two or more pilots shall offer their services to a vessel outside of a line from Punto Lomas and the southeast end of Zuinga shoal, the pilot first offering his services shall have the preference; and if the master of any vessel shall refuse to observe such rule of preference, and to take the pilot entitled to be preferred on board, the vessel, her appurtenances, the master and owner thereof, shall be jointly and severally liable to the pilot entitled to such preference for one half of the amount of pilotage he would have been entitled to claim had his services been accepted.

Rate of pilotage.

SEC. 14. The following shall be the rates of pilotage into and out of the harbor of San Diego: all vessels under five hundred tons, five dollars per foot draught; all vessels over five hundred tons, five dollars per foot draught, and four cents per ton for each and every ton of registered measurement; all vessels engaged in the whaling or fishing trades, one dollar per foot draught. When a vessel is spoken and the services of a pilot are declined, one half of the rates shall be paid. All vessels coasting between San Diego and any port in Oregon, or in Washington and Alaska territories, and all vessels coasting between ports of this state, and all steamers from Panama connecting with the Panama railroad, touching at said port of San Diego, bound to other coast ports, shall be exempt from all charges for pilotage unless a pilot be actually employed.

Pilots absenting themselves.

SEC. 15. All pilots absenting themselves from San Diego for more than thirty days shall forfeit his commission, except in case of sickness.

SEC. 16. This act shall take effect and be in force from and after its passage.

ARTICLE VIII.

PORT WARDENS.

2501. Number of port wardens, term of office.

SEC. 2501. There are four port wardens for the port and harbor of San Francisco, and one for each and every other port of entry within this state.

2502. Board for San Francisco.

SEC. 2502. Of the wardens appointed in San Francisco two or more must be master mariners. They must act in concert in the discharge of their duties, and are known as the board of port wardens for the port of San Francisco.

2503. Duty of wardens.

SEC. 2503. The port wardens, when required by any person interested in either vessel or cargo, must survey any vessel arriving in distress, or which has sustained damage or injury at sea, and survey in whole or in part the cargo thereof; and must survey the hatches, stowage, and cargo of all vessels laden with general or assorted merchandise belonging or consigned to various parties.

2504. To keep open record.

SEC. 2504. They must keep in a book provided for such purpose a record of all surveys, signed by the warden making the survey, at all times open for inspection by any person interested in the vessel or cargo surveyed, of which all

persons requiring them must be furnished with copies certified under the hand of the warden or one of the board of wardens and seal of the board, on payment of the fee therefor.

2505. *Surveys, and what same must set forth.*

SEC. 2505. In all surveys made by a port warden he must set forth clearly and fully the nature of the damage; if of merchandise, whether from actual contact with sea water or through the excess of water in the hold of the vessel, or from the humidity or sweat of the hold, bad stowage, or from such other cause by which in his judgment the damage has been occasioned. If the survey is of a damaged vessel he must give a full account of all the loss and injury which she has sustained, and recommend the repairs. He must state the value of the vessel in her damaged condition, and also the value of the repairs recommended, setting forth what parts are to be supplied anew and what parts to be put in repair.

2506. *May call assistance, but no charge therefor.*

SEC. 2506. Whenever a port warden deems it necessary he may call to his assistance, on a survey, a ship-carpenter, rigger, sailmaker, or other person practically acquainted with the merchandise to be surveyed or parts of the vessel to be repaired, who must be sworn to examine properly and to render with the warden a correct and faithful report of the surveys. No additional charge must be made therefor to the vessel unless their survey is required by the owner or agent thereof.

2507. *Sales of wrecks, vessels and merchandise for foreign underwriters.*

SEC. 2507. All wrecked or damaged vessels, or materials from the same, and all merchandise sold at public auction for account of underwriters residing abroad, when required by any party having an interest in the same, or for account of whom it may concern, or upon which claims are to be made against underwriters residing abroad, must be sold under the inspection of a warden of the port where such sale is made. And the warden must separate sound goods from those damaged, and certify specially the nature, and, as far as can be done, the extent of such damage. No port warden has authority to sell or dispose of any property that may have been surveyed by him without the consent of the owner or agent of the same; nor when the settlement of losses has been agreed upon in writing by the parties interested and a copy thereof given to the warden.

2508. *Notice of sale, how given.*

SEC. 2508. In case sales are made at auction under the direction of the port warden, he must give at least three days' notice of the same by publication in some newspaper published in the county where the survey is made, describing the articles to be sold; and if merchandise, the vessel by which imported; and if a wrecked or damaged vessel or materials of the same, the name of the vessel and where from. If no newspaper is published in the place where the sale is made, then a written notice of such sale must be posted up in the vicinity.

2509. *Wardens not to be connected with insurance.*

SEC. 2509. No port warden must, either directly or indirectly, have any connection with insurers of this state, or of any other of the states, or of foreign countries, or with the agents or representatives of such insurers, so far as his duties as port warden are concerned. He must not in any manner be interested, directly or indirectly, in any repairs he may recommend, nor in any vessel, cargo or portion of cargo he may be required to survey.

2510. *Fees for surveys and certificates.*

SEC. 2510. For each and every survey the port warden is entitled to fifteen

dollars, to be paid by the owners, masters or consignees, the amount not to exceed altogether for any one vessel the sum of seventy-five dollars. Foreign vessels, not admitted by treaty on terms of equality with American bottoms, must pay fifty per cent. advance on this rate. For all separate certificates of surveys required by different consignees he is entitled to a fee of two dollars and a half, and for each order of sale he is entitled to ten dollars.

2511. *Penalty for any one to act as such who is not a port warden.*

SEC. 2511. Any person other than a port warden, appointed according to law, who performs any of the duties of such officer prescribed in this article is liable to a penalty of not less than five hundred dollars nor more than one thousand dollars for each offense, to be recovered in any court of competent jurisdiction by the warden or board of port wardens, in the name of the people of the State of California.

ARTICLE IX.

SAN FRANCISCO HARBOR AND STATE HARBOR COMMISSIONERS.

[This entire article, from section 2521 to 2554, inclusive, was remodeled, and the new section 2520 added by the act of February 28, 1876; Amendments 1875-6, 32, from which the following amendments are taken. On account of the thorough change made and the consequent little light the original sections would throw upon the amendments, as well as on account of the great length of the original sections, they are omitted from the notes; and the inquirer desiring to consult them is referred to the volume of the Political Code as originally adopted.]

2520. *Appointment of state harbor commissioners.*

SEC. 2520. As soon as may be after the passage of this act, the governor, by and with the consent of the senate, shall appoint three state harbor commissioners, who shall hold office, one for two years, one for three years, and one for four years, from the date of their respective commissions. The governor shall, in like manner, at the expiration of their respective terms, appoint and commission their successors, for a full term of four years, excepting in case of a vacancy occurring in the board by resignation, or otherwise, to fill which he shall appoint a commissioner for the unexpired portion of the term. [*New section, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]

2521. *Bonds of commissioners—Secretaries and their duties.*

SEC. 2521. The governor shall issue commissions to each member of the state board of harbor commissioners, which commissions shall take effect immediately after such commissioners shall have filed bonds and qualified, as in this article provided. Each commissioner shall, before entering upon the duties of his office, and within fifteen days after his appointment, give a bond in the sum of fifty thousand dollars, conditioned for the faithful performance of his duties, required by this article, which bond shall be approved by the governor and state treasurer, by writing indorsed thereon, and filed in the office of secretary of state. No bond shall be required of the ex officio members of the board. The commissioners shall not be sureties for each other, nor shall any officer of the state government, nor officer or member of the legislature, be accepted as surety on said bonds. The commissioners shall take and subscribe an official oath, which oath shall be attached to and filed with said bonds respectively. The commissioners shall be known as the board of state harbor commissioners; and, after being qualified, shall choose, by ballot, one of their own number president of the board. The commissioners shall appoint as secretary of the board some suitable person, who is not one of their own number, who, before

entering upon the duties of his office, shall give a bond, with two or more sureties, in the sum of twenty thousand dollars, conditioned for the faithful performance of his duties; which bond must be approved by the commissioners, by writing indorsed thereon, and he shall also take and subscribe to an official oath, which oath shall be attached to and filed with his bond with the secretary of state. The commissioners shall appoint an assistant secretary, who shall give a bond in the sum of ten thousand dollars, with two or more sureties, conditioned for the faithful performance of his duties, which bond shall be approved by the commissioners, in writing indorsed thereon, and shall also take and subscribe an official oath, which oath shall be attached to and filed with his bond with the secretary of state. The secretary of the board shall keep the office of the board open every day, from nine o'clock A. M. till four o'clock P. M., Sundays and holidays excepted. He shall attend the meetings of the board, and record the names of all the commissioners present, and shall keep a clear and distinct record of all their proceedings at every meeting. He shall keep in suitable books a record of all moneys received and disbursed by the commissioners, and of all agreements and contracts entered into by them, which record shall be open to the inspection of the public during the usual business hours. The secretary shall forward to the controller of state, as often as once in each month, a statement under oath in the form of a balance-sheet, containing a full exhibit of all moneys received and disbursed; the sources from which the same were received, and the purposes for which the same were paid out. He shall, also, in the first week in January, April, July, and October, in each year, file in the office of the secretary of state a report, in the form of a balance-sheet under oath of the receipts and disbursements for each preceding three months. He shall keep in separate books a record of all the personal property, and the cost of the same, purchased by the commissioners in behalf of the state, and the disposition made of the same, when any shall have been sold, and the price received therefor. He shall perform such other duties properly pertaining to those of secretary as may be required of him by the board. The assistant secretary shall perform such service pertaining to the duties of his office as the secretary or commissioners may require during business hours. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2522. *Employees and their duties.*

SEC. 2522. The commissioners may appoint a chief engineer, whose duty it shall be to superintend the construction of all embankments and sea-walls, the dredging of slips and docks, the building of wharves, piers, quays and landings, thoroughfares, and other necessary structures, upon the premises and under the control of said commissioners, by virtue of this article. They may also, in their discretion, employ assistant engineers and draughtsmen, who shall be under the control and subject to the directions of the chief engineer, and pay a reasonable compensation for such services. They may appoint an attorney-at-law, who shall attend to the prosecution and defense of all suits and other matters requiring his professional services, and give counsel and advice when required by the board. They shall appoint as chief wharfinger a competent man, who must, before entering upon the duties of his office, file, in the office of the board, a bond, with two or more sureties, in a sum sufficient to cover any amount of money that shall come into his hands, conditioned for the faithful performance of his duties as such chief wharfinger, which bond, if satisfactory, shall be approved by the board by writing indorsed thereon. Such chief wharfinger shall, under the direction of the commissioners, furnish to all

(a) See remarks at head of Article IX, ante, 2520.

ship-masters, consignees, and pilots of all ships and other water craft, a printed copy of the harbor regulations of the harbor of San Francisco, which shall contain the rates of dockage, wharfage, and tolls, and such other matters as said commissioners shall deem proper to furnish to ship-masters, consignees, and pilots, to give them a correct knowledge of the regulations of said harbor; such printed copies of harbor regulations to be furnished to said chief wharfinger by said commissioners. The chief wharfinger shall also, subject to the directions of the board, superintend and direct the removal of all incumbrances and obstructions from the docks, slips, wharves, landings, and thoroughfares, and shall have, subject to the directions of the commissioners, as aforesaid, authority to station, berth, and regulate the position of all classes of water craft navigating said harbor, and to remove, from time to time, and from place to place, such water craft as the wants of commerce and good order may require; provided, however, that said chief wharfinger shall have no control over such portions of the water-front of said city and county as are held by grantees or lessees, or their assigns, under valid leases. Said commissioners may also appoint an assistant chief wharfinger, who shall perform such duties pertaining to his office as shall be required of him by said commissioners, and by said chief wharfinger. Said assistant chief wharfinger must, before entering upon the duties of his office, file, in the office of the board, a bond, with two or more sureties, in a sum sufficient to cover all moneys that may come into his hands, conditioned for the faithful performance of his duties as assistant chief wharfinger, which bond shall be approved by the board by writing indorsed thereon. Said commissioners shall also appoint a sufficient number of persons wharfingers, to collect the revenue arising from dockage, wharfage, cranage, rents, and tolls, by authority of this article, and may also appoint a sufficient number of persons toll collectors, to collect the tolls authorized to be collected by virtue of this article; each of which wharfingers and toll collectors must, before entering upon the duties of their respective offices, file, in the office of the board, a bond, with two or more sureties, in a sum sufficient to cover any moneys that may come into their hands, conditioned for the faithful performance of their duties as such wharfingers and toll collectors, which bonds shall be approved by said commissioners by writing indorsed thereon. Every wharfinger and toll collector appointed by authority of this article must make and subscribe to an official oath, which oath must be attached to and filed with his bond. The secretary of the board is hereby authorized to administer to each wharfinger and toll collector the oaths required by this article to be made by such wharfingers and toll collectors. Each wharfinger and toll collector shall keep, in suitable books to be furnished by the commissioners, an account of all moneys by him collected, which books shall be open to the inspection of the public at all reasonable times, and such wharfingers and toll collectors shall pay to the commissioners all the moneys collected by them, at least once in each week, and as much oftener as the commissioners shall require. The wharfingers appointed by authority of this article shall have authority, respectively, and they are hereby authorized, to require the captain, consignees, agents, or owners of any water craft, or the owners, agents, managers, or conductors of any railroad car, or train of cars, or the consignees of any goods, wares, or merchandise, or animals, to be landed, loaded, or unloaded upon the premises described in this article, on or before the landing, loading, or unloading thereof, to furnish to any such wharfingers, when required to do so, the number of tons, or number of hundred, or number of feet, or number of cords, or number of animals, any such water craft, or car, or train of cars, contains; and it shall be the duty of every captain, consignee, agent, or owner of any water craft, or the owners, agents, managers, or conductors of every railroad car, or train of cars, the cou-

signee of any goods, wares, merchandise, or animals, upon any railroad car, or train of cars, which goods, wares, merchandise, or animals are to be landed, loaded, or unloaded within or upon the premises described in this article, to furnish to such wharfingers a correct account of the number of tons, or the number of hundred, or number of feet of goods, wares, or merchandise, or number of animals, when required to do so by any wharfinger; and every captain, consignee, agent, or owner of any water craft, or any owner, agent, manager, or conductor of any railroad car, or train of cars, or any consignee of any goods, wares, merchandise, or animals, upon any railroad car, or train of railroad cars, who shall neglect or refuse to furnish the information required to be given to the wharfingers by this section, or who shall, designedly, give false information, shall be guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined not less than twenty nor more than one hundred dollars, or by imprisonment in the jail of the city and county of San Francisco not less than ten nor more than fifty days, or by both such fine and imprisonment. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2523. *Actions for property, moneys, and to remove obstructions.*

SEC. 2523. The commissioners may institute and prosecute to final judgment actions in the name of the people of the State of California for the possession of any portion of the premises described in this article, situate between the inshore line or line nearest the mainland and the line off-shore, six hundred and fifty feet therefrom, and parallel therewith, or for the annulling of any lease or contract entered into by the commissioners in behalf of the state by virtue of any general or special law, or for the collection of any money due or that may become due the state by authority of this article; and the commissioners may also institute and prosecute to final judgment actions for the removal of all unlawful obstructions in or upon said premises, or for the removal of all unlawful obstructions in or upon the streets through the centre of which the inshore line or line nearest the mainland, bounding said premises, runs. They may also remove any unlawful obstructions thereon after the owner, possessor, or occupant of such obstructions shall have five days' notice, in writing, to remove the same, either served on such owner, possessor, or occupant, or posted upon said obstruction by the chief wharfinger, assistant wharfinger, or wharfinger. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2524. *Water front of San Francisco in charge of commissioners—Duties of commissioners.*

SEC. 2524. The commissioners shall have possession and control of that portion of the bay of San Francisco, together with the improvements, rights, privileges, easements, and appurtenances connected therewith, or in anywise appertaining thereto, for the purposes in this article provided (excepting such parcels thereof as are held by the lessees, or their assigns, of valid leases, which parcels so held it is hereby made the duty of the commissioners to take possession of, together with the improvements thereon, as soon as said leases terminate, and also to see that the lessees, or their successors or assigns, do not exercise rights and privileges that are not conferred by said leases), bounded as follows, to wit: Commencing at the point where the easterly line of the Presidio reservation intersects the water-line front, as established by the board of state tide land commissioners; thence easterly along said water-line front to the centre of Webster street; thence southerly along the centre of Webster street to the centre of Lewis street; thence easterly along the centre of Lewis street to the centre of

(a) See remarks at head of Article IX, ante, 2520.

Polk street; thence southerly along the centre of Polk street to the centre of Tonquin street; thence easterly along the centre of Tonquin street to the centre of Larkin street; thence southerly along the centre of Larkin street to the centre of Jefferson street; thence easterly along the centre of Jefferson street to the centre of Powell street; thence southerly along the centre of Powell street to the centre of Beach street; thence easterly along the centre of Beach street to the centre of Dupont street; thence southerly along the centre of Dupont street to the centre of North Point street; thence easterly along the centre of North Point street to the centre of Kearny street; thence southerly along the centre of Kearny street to the centre of Francisco street; thence easterly along the centre of Francisco street to the centre of Montgomery street; thence along the centre of Montgomery street to the centre of Chestnut street; thence easterly along the centre of Chestnut street to the centre of Sansome street; thence southerly along the centre of Sansome street to the centre of Lombard street; thence easterly along the centre of Lombard street to the centre of Battery street; thence southerly along the centre of Battery street to the centre of Greenwich street; thence easterly along the centre of Greenwich street to the centre of Front street; thence southerly along the centre of Front street to the centre of Vallejo street; thence easterly along the centre of Vallejo street to the centre of Davis street; thence southerly along the centre of Davis street to the centre of Pacific street; thence easterly along the centre of Pacific street to the centre of East street; thence southerly along the centre of East street to the centre of Folsom street; thence westerly along the centre of Folsom street to the centre of Steuart street; thence southerly along the centre of Steuart street to the centre of Harrison street; thence southerly on a direct line with said Steuart street, two hundred and fifty-three feet nine inches, to the centre of a street the name of which is not on a map; thence at right angles, westerly, along the centre of said street to the centre of Spear street; thence southerly along the centre of Spear street to the centre of Bryant street; thence westerly along the centre of Bryant street to the centre of Beale street; thence southerly along the centre of Beale street to the centre of Brannan street; thence westerly along the centre of Brannan street to the centre of First street; thence southerly along the centre of First street to the centre of Townsend street; thence westerly along the centre of Townsend street five hundred and fifty feet, to the centre of a street the name of which is not on a map; thence at right angles southerly along the centre of said street to the centre of King street; thence along the centre of King street to the centre of Second street; thence southerly along the centre of Second street to the centre of Berry street; thence westerly along the centre of Berry street to the centre of Third street; thence southerly along the centre of Third street to the northerly line of Channel street; thence westerly along the last-mentioned line to the easterly line of Fifth street; thence southerly along said last-mentioned line to the southerly line of said Channel street; thence easterly along said mentioned line to the centre of Kentucky street; thence southerly along the centre of Kentucky street to the centre of Fourth street; thence along the centre of Fourth street to the centre of Louisiana street; thence southerly along the centre of Louisiana street to the centre of El Dorado street; thence along the centre of El Dorado street to the centre of Illinois street; thence southerly along the centre of Illinois street to the centre of Solano street; thence easterly along the centre of Solano street to the water-front line established by the board of state tide land commissioners; thence southerly along said last-mentioned line to the centre of Tulare street; thence westerly along the centre of Tulare street to the centre of Texas street; thence southerly along the centre of Texas street to the centre of Islais street; thence easterly along the centre of Islais street to the centre of Water-front street;

thence southerly along the centre of Water-front street to the centre of India street; thence westerly, southerly, and easterly, along the centre of said India street to the centre of Water-front street, to the centre of China street; thence westerly along the centre of China street to the centre of Third avenue; thence southerly along the centre of Third avenue to the northerly line of the property of the California dry dock company; thence easterly along said last-mentioned line to the water front established by the board of state tide land commissioners; thence southerly along and around said dry dock company's land to the south-easterly corner thereof; thence westerly along the line of said land to the centre of Water-front street; thence southerly along the centre of Water-front street to the centre of Nineteenth avenue; thence westerly along the centre of Nineteenth avenue to the centre of Dock street; thence southerly along the line of Dock street to the centre of Twenty-third avenue; thence westerly along the centre of Twenty-third avenue to the centre of H street; thence southerly along the centre of H street to the centre of Twenty-fourth avenue; thence easterly along the centre of Twenty-fourth avenue to the centre of Water-front street, and thence southerly along the centre of said Water-front street to the southern boundary of the county of San Francisco; thence along the southerly, easterly, and northerly boundary lines of said county to a point due north of the place of commencement, and thence south to the place of commencement. But no harbor embankment or sea-wall shall be constructed outside of the following named points and lines, to wit: Commencing at the point where the eastern boundary line of the Presidio reservation, extended in a northerly direction, intersects the three fathom contour line, shown upon the charts of the United States survey, and running thence in an easterly and southerly direction upon straight or curved lines, in such manner as to approach as near as practicable the extreme outer projections of the water-line front as described in an act to provide for the disposition of certain property of the State of California, passed March twenty-sixth, A. D. eighteen hundred and fifty-one, to a point at or near the intersection of Second and Berry streets; thence continuing southerly, upon straight or curved lines, in such a manner as to approach as near as practicable the extreme outer projections of the water-line front, as established by the board of state tide land commissioners, to the southern boundary of said city and county of San Francisco. And said commissioners, in addition to a general control over said premises, shall have authority to use, for loading and landing merchandise, with a right to collect dockage, wharfage and tolls thereon, such portion of the streets of the city and county of San Francisco ending or fronting upon the waters of said bay as may be used for such purposes without obstructing the same as thoroughfares, and authority to rent an office in the city and county of San Francisco, between Montgomery, Market, and Pacific streets and the city front; and purchase from time to time suitable books for the records of the secretary and accounts of the wharfingers, together with such stationery as may be required by the board, and to fix and regulate from time to time the rates of dockage, wharfage, cranage, tolls, and rents, and collect such an amount of revenue therefrom as will enable the commissioners to perform the duties required of them by authority of this article. And the commissioners and mayor of San Francisco may so modify and establish such rates of dockage and wharfage as will produce a revenue not to exceed in amount the moneys collected in the year eighteen hundred and seventy-five, collecting as near as possible equal amounts from dockage and wharfage. When such modification has been made, the collection of tolls must be abolished, and the toll collectors discharged. The commissioners shall construct such number of wharves as the wants of commerce shall require, and shall locate such

wharves, at such points and upon such lines, as the board may deem most suitable for the best interest of commerce, and shall repair and maintain all the wharves, piers, quays, landings, and thoroughfares the wants of commerce may require, and generally to erect all such improvements as may be necessary for the safe landing, loading, and unloading, and protection of all classes of merchandise, and for the safety and convenience of passengers passing into and out of the city and county of San Francisco by water. But no wharf shall be extended into the bay more than six hundred feet beyond the inside line, or line nearest the shore of the city and county of San Francisco, described in this article, or more than six hundred feet beyond the permanent water-front line when established under the provisions of this article, nor shall any such wharf be constructed upon such place or line as will cause any slip or dock to be less than one hundred and thirty-six feet wide at the most narrow point between the wharves. When they determine that a new wharf shall be erected, or any other necessary improvement constructed or repairs made, or dredging machines, scows, steam tugs, and any necessary machinery, the cost of which shall exceed three thousand dollars, they shall advertise for sealed proposals, for a period of not less than ten days, in one or more of the daily newspapers in the city and county of San Francisco. Every proposal shall be accompanied by a certified check for an amount equal to five per cent. of the amount of such proposal, such check to be made payable to the order of the secretary of said board, conditioned if the proposal is accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be paid into the state treasury by said secretary as liquidated damages for such failure and neglect as a portion of San Francisco harbor improvement fund. Such advertisement shall contain a general description of the work to be done, the materials to be used, the place where to be used, and must refer to specifications, which must contain a full and accurate description of the work to be performed, the material to be used, and where to be used, which specifications shall be kept in the office of the secretary of the board in such manner that all persons may inspect the same during the usual business hours of all days except Sundays and holidays. On a day named in the advertisement, the commissioners shall open the bids in the presence of such bidders as are present, and award the contract to the lowest bidder who shall furnish sufficient sureties to guarantee the performance of the work. If, in the opinion of the commissioners, the bids are too high, they may reject them and advertise anew in like manner as before. If, in the opinion of the commissioners, the second bids are too high, they may reject them likewise, and enter into contract with responsible parties without giving further notice. Any contract entered into without giving public notice and receiving bids, must be at least ten per cent. lower than the lowest rejected bid. The board may construct such harbor, embankment, or sea-wall, as shall be necessary to protect the harbor of San Francisco, and dredge such number of slips and docks as the commerce of the port of San Francisco may require, to a depth that will admit of the easy and free ingress and egress of all classes of water craft that load and discharge cargoes at the wharves, piers, quays, landings, and thoroughfares in the harbor of San Francisco; to perform which dredging the board of state harbor commissioners are hereby authorized and empowered to purchase or construct dredging machines, scows, steam tugs, and the necessary machinery, and employ men for operating the same. When any portion of the premises described in this article shall be dredged, the sand, mud, or other substance shall be deposited in a place designated by the board in not less than fifteen fathoms of water. All classes of water craft that uses or makes fast to any

wharf, pier, quay, landing, or thoroughfare, and lands upon or loads therefrom any goods, wares, or merchandise, shall be liable, and must pay to the commissioners such rates of dockage as shall be fixed by authority of this article; and all such water craft as shall discharge or receive any goods, wares, or merchandise, while moored in any slip, dock, or basin, within the jurisdiction of the commissioners, shall pay one half the regular rates of dockage. Any water craft that shall leave any wharf, pier, quay, landing, thoroughfare, slip, dock, or basin, unless forced to do so by stress of weather, without first paying the dockage due from such vessel, shall be liable to pay double the regular rates. The charge for wharfage and tolls shall be a lien upon all goods, wares, and merchandise landed upon any of the wharves, piers, quays, landings, or thoroughfares, upon the premises described in this article; and the commissioners, their agents or lessees, may hold possession of any such goods, wares, or merchandise, so landed as aforesaid, to secure the payment of such wharfage and tolls; and for the purpose of such lien, are deemed to have possession of such goods, wares, and merchandise, so landed, until such charges for wharfage and tolls are paid. The commissioners shall have power to make reasonable rules and regulations concerning the control and management of the property of the state, which is intrusted to them by virtue of this article, and said commissioners are hereby authorized and required to make without delay, and from time to time, and publish not less than thirty days, in a daily newspaper of general circulation, published in the city and county of San Francisco, all needful rules and regulations, not inconsistent with the laws of the state or of the United States, in relation to the moving and anchoring of vessels in said harbor, providing and maintaining free, open and unobstructed passage-ways for steam ferry-boats and other steamers navigating the waters of the bay of San Francisco and the fresh-water tributaries of said bay, so that such steamers can conveniently make their trips without impediment from vessels at anchor or other obstacles. And said commissioners may also make all needful rules and regulations governing the removal of such vessels from the wharves and other landings, and from slips and docks, as are not engaged in receiving or discharging cargo, prescribing the time during which goods, wares, and merchandise, landed upon any wharf, pier, quay, landing or thoroughfare, shall be permitted to remain thereon, and may divide the same into several classes, and may, by such rules and regulations, provide that in case any such goods, wares, or merchandise remain upon any wharf, pier, quay, landing, or thoroughfare beyond the term so prescribed, the respective wharfinger may, under the order of the commissioners, remove and deposit the same in a suitable place, at the charge, risk, and expense of the owner thereof. When any goods, wares, or merchandise shall have remained upon any wharf, pier, quay, landing, or thoroughfare, more than twenty-four hours, the commissioners may, in their discretion, charge such additional rates for each subsequent day as in their opinion is just and equitable. The commissioners may, in their discretion, set apart and assign for the exclusive use of the water craft used by the officers of the federal government such convenient and safe landings as such officers may require, together with suitable premises near such landings as may be set apart and assigned for their use, upon which premises such officers may cause to be erected offices and store-houses to suit their convenience, and the commissioners shall charge a reasonable compensation per month for the use of such landings and office and store-house premises; set apart and assign a suitable and proper locality for the use of the harbor police of the city and county of San Francisco; and also a suitable place for a boat-house station for the exclusive use of the quarantine and health officers of said city and county, without compensation; set apart and assign for the exclusive

use of steam ferry-boats suitable slips, in which such structures may be erected as will secure the safe and convenient landing of passengers, and safe landing and delivery of freight; set apart and assign suitable wharves, berths or landings for the exclusive use of sea-going steamers, to construct suitable sheds, gates, and other temporary structures as may be necessary for the safe and convenient landing of passengers, and safe landing and delivery of freight; and set apart and assign for the sole and exclusive use of the fishermen of the city and county of San Francisco such place or places as the said commissioners shall deem proper, sufficient, and adapted for the requirements and necessities of said fishermen; provided, the premises so set apart by said commissioners shall be used only for the legitimate business of said fishermen, and for no other purpose; and provided, said commissioners shall not charge therefor more than the following rates: for boats over twenty-two feet and under forty feet long, one dollar per week; for boats from sixteen to twenty-two feet long, seventy-five cents per week, and for all boats less than sixteen feet long, twenty-five cents per week. The commissioners may assign suitable places for the landing of horses, cattle, sheep, and swine, and when such places have been assigned it shall be a misdemeanor for a commander of any water craft to land any greater number than ten at any one time from any water craft at any other place. The commissioners may set apart for the uses and purposes of dry docks and marine railways, such portions of the water front northwesterly of the northerly end of Kearny street, and southerly of the easterly end of Solano street, as the wants of commerce may require, and lease the same for a period not to exceed ten years. When the commissioners lease premises for marine railways and dry dock purposes, as provided in this section, they shall advertise for sealed proposals, for a period of not less than ten nor more than twenty days, in one of the daily newspapers of the largest circulation, printed in the city and county of San Francisco, which advertisement shall contain a description of the premises to be leased. On the day named in the advertisement, the commissioners shall open the bids in the presence of such of the bidders as are present, and award the premises to be leased to the highest responsible bidder that shall furnish sufficient sureties to guarantee the payment of the rent, and may negotiate for and accept and cancel any lease of any portion of the premises described in this article, and pay a reasonable compensation for any structures upon any such leased premises as in the opinion of the board and engineer may be useful for such commercial purposes as this article is intended to promote. No person or company shall, without the consent of the board of state harbor commissioners, land or remove any goods, wares, or merchandise, or other thing, upon or from any wharf, pier, quay, landing, or thoroughfare, situate upon the premises described in this article, unless authorized to do so by virtue of valid lease; nor shall any person collect dockage, wharfage, crantage, rent, or toll, within the boundaries of the premises described in this article, except by virtue of valid leases, without first obtaining permission to do so from said commissioners; nor shall any person or company place or cause to be placed any obstructions in that portion of the bay of San Francisco, described in this article, nor upon any wharf, pier, quay, landing, or thoroughfare, without the consent of the board. Whenever any wharf, pier, quay, landing, or thoroughfare, in the harbor of San Francisco, shall be incumbered, or their free use interfered with, by goods, wares, merchandise, or other substance, whether loose or built upon, or fixed to any such wharf, pier, quay, landing, or thoroughfare, it shall be the duty of the commissioners to notify, in writing (which notice may be served by a wharfinger or by the secretary or assistant secretary of the board), the owner, agent, occupant, or person, placing or keeping such obstructions thereon, to remove the same within twenty-four hours after the

serving of such notice, and in case of failure to comply with such notice, and remove such obstructions, the owner, agent, occupant, or person, so notified, shall be liable to pay the commissioners the sum of twenty-five dollars for each and every day during which such obstruction shall remain upon any such wharf, pier, quay, landing, or thoroughfare; and the commissioners shall have power, in their discretion, to remove any such incumbering substance, and store the same in any suitable, convenient, and safe place, and a sum equal to the amount of the expenses of the removal, together with all other necessary charges, shall be paid by the owner of such incumbering substance to the commissioners, and such sum and necessary charges shall be a lien on such substance until paid. The rates of dockage, wharfage, and tolls, shall not exceed those established by the board of state harbor commissioners July first, eighteen hundred and seventy-four, and dockage shall not be collected on any vessel lying at anchor outside of dock, wharf, or slip. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)

2525. *Extension of streets along the water front.*

SEC. 2525. The board of state harbor commissioners are authorized to extend any of the streets lying along the water front of said city and county, to a width not exceeding one hundred and fifty feet, where they have not been already so extended. The outer half of such streets must be constructed or built and maintained in good repair by the state harbor commissioners, or parties holding under them, and may be used as a landing-place or pier, on which dockage, wharfage, and tolls may be collected; and until such extensions are made, the commissioners may have and use as a landing-place, with full power to collect dockage, wharfage, and tolls thereon, so much of the streets now fronting upon the water front as may be used for such purpose without obstructing the same as a thoroughfare. The inner half of such streets shall be constructed and maintained in good repair by the owners of the lots abutting thereon and the city and county of San Francisco. The commissioners are authorized to construct across the outer half of said streets an extension of the sewers of the said city and county; if it be necessary to take any land for the purpose of widening any such street, the commissioners are hereby authorized to institute and prosecute to final determination proceedings therefor in conformity with the provisions of Part III, Title VII of the Code of Civil Procedure, and to pay such compensation as may be assessed for such land taken. When it becomes necessary for the commissioners to construct any wharves on the line of the water front they are authorized to adopt and pay for any structures which would form part of such wharves and which have been constructed along such line by private parties prior to the passage of this act. [*Amendment, approved April 3, 1876; Amendments 1875-6, 51; took effect from passage.*^(b)

2526. *Limit of money to be collected.*

SEC. 2526. No greater amount of money shall, in the main, ever be collected by the collection of dockage, wharfage, tolls, rents, and crantage, than shall be necessary to construct and keep in repair such number of wharves, piers, landings, and thoroughfares, construct sheds, dredge such number of slips and docks, construct a sea-wall and harbor embankment, and pay incidental expenses allowed to be paid by this article. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(c)

(a) See remarks at head of Article IX, ante, 2520.

(b) This section was previously amended by act of February 28, 1876; Amendments 1875-6, 32, at the same time with the other sections of the entire article. The amendment of February 28, provided only for the

widening of East street. The amendment in the text enlarged the provisions for widening so as to embrace any of the streets on the water front.

See also remarks at head of Article IX, ante, 2520.

(c) See remarks at head of Article IX, ante, 2520.

2527. Contracts.

SEC. 2527. No contract or obligation entered into by the harbor commissioners, which creates a liability or authorizes the payment of money, shall be valid or of binding force, unless signed by all three of the commissioners, and countersigned by the secretary of the board; and no obligation or contract of any kind, incurring the expenditure of money, shall be entered into by the commissioners, unless there is money in the state treasury to the credit of the San Francisco harbor improvement fund sufficient to pay the same. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2528. Disposition of moneys collected.

SEC. 2528. All moneys collected by virtue of this article shall be paid by the commissioners into the state treasury, to the credit of the San Francisco harbor improvement fund, at least as often as once in each month, in like currency as received, excepting so much thereof as may be necessary to pay the salaries of the commissioners, secretary, assistant secretary, engineers, attorney-at-law, wharfingers, toll-collectors, office rent, cost of office furniture, books, stationery, lights, fuel, legal and other incidental expenses, and three thousand dollars per month for urgent repairs; which last-mentioned sum the commissioners are hereby authorized to expend monthly in making repairs of wharves, piers, landings, thoroughfares, and other structures required by urgent necessity, without advertising for sealed proposals therefor. And said commissioners are authorized to remit such moneys to the state treasurer by express. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2529. Vouchers, drafts, and warrants.

SEC. 2529. The commissioners shall take vouchers for all sums of money by them expended under the authority of this article, excepting fifty dollars per month for postage-stamps, express, and other incidental expenses, and safely keep the same on file in the office of the board. For all sums of money paid by the commissioners, excepting those mentioned in section 2528, drafts shall be drawn by them on the controller of state, countersigned by the secretary of the board, and the controller of state shall draw his warrant on the state treasurer, who shall pay the same out of any money in said treasury credited to the San Francisco harbor improvement fund. No warrant shall be drawn by the controller upon the treasurer of the state, as provided in this section, unless the order bears the signatures of all three commissioners, and of the secretary of the board. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2530. Reports and receipts.

SEC. 2530. On the payment into the state treasury of any sum of money, as provided in this article, the state treasurer and state harbor commissioners shall report to the state controller the amount so paid; and the state treasurer shall give to the commissioners a receipt for all sums so paid. The commissioners shall report to said state controller the amount of money paid into said treasury by them during each month, and shall also report to said controller the amount received and disbursed by the board every three months, and during the period for which such report is made. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2531. Ex officio members of board.

SEC. 2531. The governor of the state and the mayor of the city and county of San Francisco are hereby made ex officio additional members of the board

(a) See remarks at head of Article IX, ante, 2520.

of state harbor commissioners, for the special purposes herein mentioned, and shall take part in the action of the board as hereinafter provided. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2532. *New sea wall for San Francisco harbor.*

SEC. 2532. The board of state harbor commissioners are hereby authorized and empowered and directed within six months from and after the passage of this act to employ two consulting civil engineers, to act in concert with the engineers of the board, to make a survey, select and locate a new line for a harbor embankment or sea-wall, and make a report of their doings to said commissioners, who shall, after receiving the same, appoint a time for holding at the office of the board a special meeting of the board, to consider the question of the adoption or rejection of the same. The board shall, at least ten days previous to said meeting, notify the governor of the state and the mayor of the city and county of San Francisco of the time, place, and object of said meeting of said board, and shall request them to be present and take part in the consideration of the question; and at said meeting, or any adjourned meeting thereof, the governor and mayor shall be deemed additional members of said board, with like powers and rights as the other members thereof. If they are not present at the meeting, the board shall adjourn to a day certain, and notify them anew as before; and if either be present at the adjourned meeting, with three commissioners, action may be had, and an affirmative vote of all four present shall determine the question; any less vote shall be a negative vote. But the board may order new surveys and locations, which may be adopted or rejected in like manner as before. If the vote is in the affirmative, the line adopted shall be thenceforth the line of the harbor embankment and sea-wall of the port of San Francisco. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2533. *San Francisco harbor improvement fund.*

SEC. 2533. On and after the passage of this act the treasurer of the state shall keep the money remitted to him by the board of state harbor commissioners, to the credit of a fund to be known as the San Francisco harbor improvement fund; all moneys in the state treasury to the credit of the state wharf and dock fund shall be transferred by the state treasurer to the San Francisco harbor improvement fund, and the state wharf and dock fund account shall be closed, and the state treasurer shall notify the board of such transfer, after which all drafts drawn by the board shall be paid by the treasurer out of the San Francisco harbor improvement fund. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2534. *Limit of compensation for collecting dockage, etc.*

SEC. 2534. No greater sum than two hundred dollars per month shall be paid, on an average, for the collecting of dockage, wharfage and tolls on any wharf and the bulkhead adjacent thereto, and for the cleaning of the same, excepting at the bulkheads between Market and Mission, and Howard street wharves, at which bulkheads one hundred dollars per month may be paid until wharves have been constructed between said wharves. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2535. *Duties of state treasurer—Accounts and books.*

SEC. 2535. The state treasurer shall receive all moneys paid by the state harbor commissioners, and keep the same in a separate fund, to be known as the San Francisco harbor improvement fund, and pay out the same as provided for in this article, and shall keep an accurate account of all moneys received by him and paid

(a) See remarks at head of Article IX, ante, 2520.

out under the authority of this article, in books kept solely for that purpose; which said books shall be open at all times to the inspection of the governor and controller of state, and of any committee appointed by the legislature, or by either branch thereof. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2536. *Proposals and contracts for construction of new sea-wall.*

SEC. 2536. When the commissioners shall determine to commence the construction of a continuation of the harbor embankment or sea-wall, they must advertise for sealed proposals, for a period of not less than sixty days, in not less than two of the daily newspapers published in the city and county of San Francisco. The advertisement must contain a full and accurate description of the work to be performed, the material to be used, and the place where to be used. On a day named in the advertisement, the commissioners must open the bids in the presence of such bidders as are present, and award the contract to the lowest bidder, who shall furnish a bond, with two or more responsible sureties, to be approved by the commissioners, which approval shall be by writing, indorsed upon said bond, conditioned for the due performance of the contract. If, in the opinion of the commissioners, the bids are too high, they shall reject them and advertise anew in like manner as before. And if, in the opinion of the commissioners, the second bids are also too high, they shall reject them, likewise, and may enter into a contract with responsible parties without giving further notice. The parties entering into a private contract with the commissioners must give a bond, with two or more responsible persons as sureties, to be approved by the commissioners, which approval shall be by writing, indorsed upon said bond, conditioned for the faithful performance of the contract. But the consideration agreed to be paid in any contract entered into without giving public notice must be five per cent. lower than the lowest responsible bid rejected. The work to be performed under any one contract shall not exceed one thousand lineal feet of harbor embankment or sea-wall. But the commissioners may enter into as many contracts at the same time as they may deem the public good shall require, provided the sum total of the sums agreed to be paid shall not exceed the amount of money to the credit of the San Francisco harbor improvement fund in said treasury, not required to pay for the erection of the necessary wharves and the repairing of wharves and other wooden structures upon the city front, the dredging of slips and docks, and incidental expenses. Separate contracts may be entered into for the dredging of a channel for the reception of the rock required for the construction of a harbor embankment; provided, that the advertising for sealed proposals, the receiving and opening of bids, and the awarding of contracts required in this section, shall be complied with in the letting of such work in separate contracts. The commissioners may, if in their opinion it will be more economical, dredge with the dredge belonging to the state, the channel necessary for the reception of the stone used in the construction of the harbor embankment or sea-wall, provided they advertise for the stone work of the embankment or sea-wall as above set forth. No contractor who enters into a contract to construct any portion of said harbor embankment or sea-wall, shall be required to commence the work in less than thirty days after the awarding of the contract. The board shall, at least ten days previous to the holding of any meeting as provided in this section, notify the governor of the state and mayor of the city and county of San Francisco, of the time, place, and object of the meeting, and request them to be present and take part therein; and at said meetings the governor of the state and said mayor shall be deemed additional members of said board, with like

(a) See remarks at head of Article IX, ante, 2520.

powers and rights as the other members thereof; and no contract shall be entered into under the authority of this article, without the consent of either the said governor or said mayor. Neither of the commissioners, nor their appointees, shall be interested in any contract for the erection or repairing of any work upon the premises described in this article. Any commissioner or appointee who shall be so interested is guilty of a felony. Every proposal shall be accompanied by a certified check for an amount equal to five per cent. of the amount of such proposal, such check to be made payable to the order of the secretary of said board, conditioned if the proposal [is] accepted and the contract awarded, and if the bidder shall fail or neglect to execute the contract and give the bond required within six days after the award is made, in that case said sum mentioned in said check shall be paid into the state treasury by said secretary, liquidated damages for such failure and neglect as a portion of San Francisco harbor improvement fund. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2537. *Report of commissioners.*

SEC. 2537. The commissioners shall, on or before the first day of November, A. D. eighteen hundred and seventy-seven, and every two years thereafter, make to the governor a full report of all moneys by them received and disbursed, stating, specifically, for what the same was received and for what purpose expended, and shall give a concise account of all improvements made, and the general condition of the property under their charge. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2538. *Maps of changes in lines of water front or streets.*

SEC. 2538. In case the lines of the water front of the city and county of San Francisco, or the lines of any of the streets of said city and county ending at said water line, shall be changed by authority of this article, the commissioners shall cause to be made two accurate maps of survey, showing such change, which maps shall be dated, certified, and signed by the engineer of the board and commissioners, and one filed in the office of the recorder of said city and county, and the other in the office of the board. After being so filed, they shall be considered and treated as official maps by all the courts of record in the state. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2539. *Office and duties of chief wharfinger.*

SEC. 2539. The chief wharfinger shall keep an office in some convenient place upon the city front, between Market and Pacific streets, which shall be kept open every day (Sundays and holidays excepted), from seven A. M. till six P. M. The commissioners shall furnish a suitable building for an office, for the exclusive use of said chief wharfinger and assistant chief wharfinger, with suitable office furniture. It shall be the duty of the chief wharfinger to execute and enforce the rules and regulations which may be established by said board of state harbor commissioners pursuant to the provisions of this article. And it shall be the duty of all pilots, masters of tug-boats, masters, owners, and consignees of vessels, to obey all lawful orders and directions of the chief wharfinger in relation to the stationing, anchoring, and removing of vessels under and pursuant to such rules and regulations. The chief wharfinger is empowered to determine cases of collision by consent of all parties interested, and where damages do not exceed three hundred dollars the decision is final. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

(a) See remarks at head of Article IX, ante, 2520.

2540. Duties of chief wharfinger as to abandoned water craft and boats adrift.

SEC. 2540. In addition to the duties required to be performed by the chief wharfinger by any section in this article preceding this section, he shall take in charge all abandoned water craft and all boats picked up adrift, and secure the same, after which he shall advertise, for one week, in one of the daily newspapers printed in the city and county of San Francisco, giving the full particulars pertaining to the same, and request all parties interested to appear and establish their title or claim thereto, within twenty days from the last publication. If claimed within said period, such property shall be delivered to the owner on payment of all costs of removing, securing, and advertising the same. If not claimed within said period, or if the owner fails to pay the charges, such property shall be sold by the chief wharfinger, to the highest bidder, at public auction, and the proceeds, less the costs, shall be paid the owner, if claimed by him, or, if not claimed by the owner, shall be paid to the board of state harbor commissioners; but the owner shall be entitled to receive from said board the amount so paid, if he shall claim the same within one year from the date of said payment. For the purposes of this section the harbor of San Francisco shall be the tide-waters of the city and county of San Francisco, and the jurisdiction of the chief wharfinger shall, when performing the duties required by this section, be coextensive with such tide-waters. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2541. Refusal to obey lawful orders of chief wharfinger.

SEC. 2541. If any master, agent, or owner of any water craft, shall refuse or neglect to obey the lawful orders or directions of the chief wharfinger in any matter pertaining to the regulations of said harbor, or the removal or stationing of any water craft, such master, agent, or owner, so refusing or neglecting, is guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine not to exceed three hundred dollars, or by imprisonment not to exceed one hundred days in the jail of the city and county of San Francisco. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2542. Obstructions to navigation.

SEC. 2542. All persons are forbidden to deposit, or cause to be deposited, in the waters of the harbor of San Francisco, as described in the preceding sections, any substance that will sink and form an obstruction to navigation, without first obtaining permission in writing of the board of state harbor commissioners, which permission shall describe, with an ordinary degree of certainty, the place where such deposit may be made, and the secretary of the board shall record such permission. Any person violating the prohibition contained in this section is guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction, shall be fined not less than one hundred or more than five hundred dollars, or imprisoned in the jail of the city and county of San Francisco not less than thirty nor more than ninety days; provided, that nothing herein shall be construed to prevent or interfere with the construction of works now in progress in connection with the Oakland harbor. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2543. Speed of horses and vehicles on wharves.

SEC. 2543. It shall not be lawful for any person to drive a horse, or mule or any vehicle drawn by one or more horses or mules, used in the removal of merchandise upon any wharf, pier, quay, landing or thoroughfare, faster than a

(a) See remarks at head of Article IX, ante, 2520.

walk. Any person violating the prohibition in this section contained is guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined not less than twenty dollars, or imprisoned in the county jail of the city and county of San Francisco not less than ten days. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2544. *Jurisdiction of police judge's court.*

SEC. 2544. The police judge's court of the city and county of San Francisco shall have jurisdiction to try all cases of misdemeanor arising under this article. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2545. *Qualifications of officers.*

SEC. 2545. No person shall be appointed to any office by authority of this article who is not a qualified elector of the state; and no person shall be eligible to any office by virtue of this article who is interested in any class of water craft sailing into and out of the bay of San Francisco, as owner, mortgagee or consignee. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2546. *Official bonds.*

SEC. 2546. All official bonds required to be given by authority of this article shall be to the people of the State of California. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2547. *Seal.*

SEC. 2547. The board of state harbor commissioners shall procure and adopt a seal. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2548. *When no tolls or wharfage to be collected.*

SEC. 2548. No tolls or wharfage shall be collected from travelers going on board or leaving any steamer or ferry, or upon their carriages or baggage, nor for empty packages returned to the wharf or any vessel, or for domestic supplies for private individuals intended for consumption and not for sale, weighing less than one hundred pounds. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2549. *Collections to be in gold and silver coin.*

SEC. 2549. The revenue collected and disbursed by authority of this article shall be gold and silver coin of the United States. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2550. *Wharfingers and collectors to be special policemen.*

SEC. 2550. It is hereby made the duty of the board of police commissioners of the city and county of San Francisco to appoint such number of wharfingers and toll collectors special policemen as such commissioners shall request in writing, such police commissioners to appoint, and also shall furnish such special policemen the usual badge of office, which shall be paid for by the commissioners; such appointments must be renewed once in each year. The jurisdiction of such special policemen shall be coextensive with the premises described in this article, and their terms of office as such wharfingers and toll collectors. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*]^(a)

2551. *Amendments not to impair pending actions, etc.*

SEC. 2551. Nothing in this article shall be taken or deemed to affect any action

(a) See remarks at head of Article IX, ante, 2520.

or suit now pending, or any right of action accrued, or any contract or obligation existing under the provisions of the statutes hereby amended; but such suits or actions may be prosecuted in the name in which they have been instituted, and such rights of action, contract or obligation shall remain unimpaired, and may be prosecuted and enforced in all respects the same as if this amendment had not been made. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2552. *Salaries.*

SEC. 2552. The salary of each commissioner, except the governor and mayor, is two hundred and fifty dollars per month; the salary of the attorney-at-law and the secretary, is two hundred dollars per month each; the salary of the chief wharfinger is two hundred and fifty dollars per month; the salary of the chief engineer is two hundred and fifty dollars per month; the salary of the assistant secretary and assistant chief wharfinger is one hundred and fifty dollars per month each; the salary of the wharfingers is one hundred dollars per month each; and the salary of the toll collectors is eighty dollars per month each; all of which salaries shall be payable monthly; provided, that no ex officio officer or consulting engineers shall receive any compensation except traveling and other incidental expenses. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2553. *Duties of attorney-general.*

SEC. 2553. The attorney-general of the state must give such legal advice and render such legal services as may from time to time be required of him by the commissioners, in connection with their duties, without further compensation. [*Amendment, approved February 28, 1876; Amendments 1875-6, 32; took effect from passage.*^(a)]

2554. [SEC. 2554^(b) was repealed by act of February 28, 1876; Amendments 1875-6, 32; took effect from passage.]

An Act to authorize the board of state harbor commissioners to set apart a portion of the water front of the city and county of San Francisco for certain purposes.

Approved March 30, 1872; 1871-2, 728.

Portion of water front of San Francisco for use of fishermen.

SECTION 1. The board of state harbor commissioners are hereby authorized and empowered to set apart, for the exclusive use and benefit of the fishermen of the city and county of San Francisco, such portion of the water front of said city and county of San Francisco as said board of state harbor commissioners shall deem proper and adapted and sufficient for the requirements and necessities of said fishermen; provided, that said portion of the water front of said city and county of San Francisco to be set apart by said board of state harbor commissioners shall be used only for the legitimate purposes and business of said fishermen, and no other.

Rates of wharfage.

SEC. 2. The board of state harbor commissioners shall charge and collect for every fishing boat in the bay and harbor of San Francisco taking advantage of the provisions of this act such rent or wharfage as they shall deem just and proper; provided, they shall not charge more than the following rates, to wit: for boats thirty-two (32) feet long or over, one dollar per week; for boats twenty-two feet long and under thirty-two feet, seventy-five cents per week; for smaller boats, fifty cents per week.

(a) See remarks at head of Article IX, ante, 2520.

office rooms with a fire-proof vault for its use at a rent not to exceed \$150 per month.

(b) The repealed section provided that the board might procure and lease on behalf of the state suitable

Collecting officer.

SEC. 3. The board of state harbor commissioners are hereby authorized and empowered to employ some suitable person to collect the revenue provided in the foregoing section of this act, and pay a proper compensation therefor, not exceeding one hundred dollars per month; and the person so employed shall be required to file a satisfactory bond with the commissioners sufficient to cover any amount of revenue which may at any time remain in the hands of such collector. They shall further require the person so appointed as aforesaid to keep a correct account of all moneys by him collected.

Use of moneys collected.

SEC. 4. All moneys collected under this act, after deducting the salary provided to be paid to the collector mentioned in the preceding section of this act, shall be paid in to the board of state harbor commissioners, and disposed of in like manner as other moneys collected by the said board of state harbor commissioners.

Fishing boats mooring elsewhere.

SEC. 5. The owner or owners of any fishing boat which shall be moored to any portion of the water front of the city and county of San Francisco, except such as shall have been set apart for that purpose by the board of state harbor commissioners under the provisions of this act, shall be deemed guilty of a misdemeanor and fined in a sum not less than five dollars nor more than fifty dollars.

SEC. 6. This act shall take effect immediately.

An Act authorizing and directing the board of state harbor commissioners to reduce or abolish the rate of dockage, wharfage and tolls.

Approved March 30, 1872; 1871-2, 797.

Reduction of rates of dockage, wharfage and tolls.

SECTION 1. The board of state harbor commissioners are hereby authorized and directed to reduce the rates of dockage, wharfage and tolls, or to abolish the same, or any of them, and shall, on or before the first day of March A. D. eighteen hundred and seventy-two, reduce the same, so that the rates thereafter to be charged and collected shall not exceed fifty per cent. of the rates charged at the date of the passage of this act.

Reduction on leases.

SEC. 2. Whenever the board reduces the rates of dockage, wharfage or tolls below the present rates, they may make a proportionate reduction on the monthly payments on all leases of the water front leased by said board.

SEC. 3. This act shall take effect from and after its passage.

An Act to authorize the board of state harbor commissioners to make repairs upon private wharves in their possession.

Approved March 26, 1874; 1873-4, 663.

Maintenance of wharves.

SECTION 1. The board of state harbor commissioners are hereby authorized and empowered, in their discretion, to repair and maintain any wharf or wharves in their possession or under their control, notwithstanding such wharf or wharves may belong to private parties, and to pay the expenses thereof in the same manner as is now provided for the repairs or maintenance of the wharves of the state; provided, however, that such authority to repair and maintain private wharves shall terminate with the termination of the possession or control of the same on the part of said board.

SEC. 2. This act shall take effect immediately after its passage.

An Act to authorize the board of state harbor commissioners to adjust and pay certain claims.

Approved March 26, 1874; 1873-4, 664.

[This act provided for the payment of so much or all of certain claims that might be found equitably due, not exceeding \$25,000 in all.]

An Act concerning the state harbor commissioners, and for other purposes.

Approved March 30, 1874; 1873-4, 910.

Harbor of San Francisco.

SECTION 1. The harbor of San Francisco is hereby placed under the control of the board of state harbor commissioners, and they are authorized to regulate the position of ships, their moorings and anchorage, and generally to make rules and regulations concerning them, with power to enforce the same as fully as that formerly used and exercised by the harbor-master of the city and county of San Francisco.

Routes of ferry boats.

SEC. 2. The commissioners shall keep the routes of the ferry boats, passing in and out of said harbor, free and open at all times, so that ferry boats can conveniently make their trips without impediment on the part of vessels at anchor, or other obstacles.

Harbormaster.

SEC. 3. The present harbormaster of the city and county of San Francisco shall continue in office as such until the end of the term for which he was elected, and draw the salary allowed him by law. He shall, during such term, perform such services in and about the management and regulation of said harbor, as the commissioners may require of him. At the end of said term said office shall become extinct, and all laws requiring the election of such an officer shall be deemed to be repealed and abolished, and thereafter all harbor regulations and management shall be performed by the commissioners as hereinafter provided.

Duties, how performed.

SEC. 4. At the end of the term of office of the present harbormaster of San Francisco, either by lapse of time, resignation, or otherwise, the state harbor commissioners shall require said duties to be performed by the chief wharfinger, or other executive officer of said board, as they may deem most advantageous to the public interests, but no special office shall be created for that purpose alone.

SEC. 5. This act shall take effect and be in force from and after its passage.

An Act granting further powers to the board of state harbor commissioners.

Approved March 30, 1874; 1873-4, 912.

Dredging.

SECTION 1. The board of state harbor commissioners are hereby authorized and empowered to do the dredging necessary to be done under the operations of said department, and for that purpose, to build or purchase such dredgers, barges, and other engines, machinery, and appliances as may be necessary to do and perform said work, and to employ all necessary men and means therefor, and to pay for the same out of the funds in the state treasury to the credit of said board, or any moneys arising from the revenues of the wharves and docks under their charge.

SEC. 2. This act shall take effect and be in force from and after its passage.

An Act to transfer certain funds in the state treasury belonging to the state harbor commission.

Approved April 3, 1876; 1875-6, 761.

Treasurer to transfer funds.

SECTION 1. The state treasurer is hereby directed to close the account in his office known as the "San Francisco harbor protection fund," and to transfer the money to its credit to the account of "San Francisco harbor improvement fund."

SEC. 2. This act shall take effect from and after its passage.

An Act to authorize the compromise of certain litigation concerning a portion of the water front of the city and county of San Francisco.

Approved April 3, 1876; 1875-6, 905

[This act authorizes the governor, mayor of San Francisco and board of state harbor commissioners to compromise and settle with claimants for the premises lying between Jackson and Pacific streets, and outside of the water-front line as established by the beach and water lot act of March 26, 1851. The compromise contemplated was to accept deeds of the entire property to the state, and pay therefor such amount as might be determined on out of the San Francisco harbor improvement fund.]

ARTICLE X.

HARBOR COMMISSIONERS FOR THE PORT OF EUREKA.

2567. *Harbor commissioners for the port of Eureka.*

SEC. 2567. There is a board of three commissioners, known as the "Board of harbor commissioners of the port of Eureka." The chairman of the board of supervisors of Humboldt county, and the president of the board of trustees of the town of Eureka, in the county of Humboldt, are ex officio members thereof, and the third member is appointed by the governor of the state, and holds his office for the term of two years from the date of his appointment and until his successor is appointed and qualified.

2568. *Survey and jurisdiction of the board.*

SEC. 2568. The board must, if the same has not been done, cause to be surveyed the water front of the town of Eureka, on Humboldt bay, and the land joining the town, one half of a mile to the west and one half of a mile to the east of the corporate limits thereof, and the waters of the bay for a distance of one mile northerly from the water front line, and make or cause to be made a map of such survey, and file a copy thereof in the county recorder's office of the county; within and for these limits the board of harbor commissioners may make such rules and regulations as may be necessary and proper for the protection of navigation therein.

2569. *Their duties, rules and regulations.*

§ 2569. The board may:

1. Regulate the erection and extension of wharves and piers and prescribe the plan and dimensions thereof;
2. Regulate the tolls, wharfage, or dockage to be charged thereon;
3. Regulate the manner of constructing booms, and to limit their extent into the waters of the bay;
4. Regulate and regulate the manner in which rafts, boats, or vessels must lie at anchor or be moored to any wharf or pier;
5. Put and remove obstructions to the regular ebb and flow of the tides, and the deposit and escape into the waters of the bay of substances likely to injure, interfere with, or impede the navigation, or to create shoals or shallows in or less the depth of the waters thereof;

6. Impose penalties for violation of such rules and regulations, not exceeding, for any one violation, the sum of five hundred dollars, to be recovered by action in the name of the board before any court of competent jurisdiction, together with costs of suit, the net proceeds of which actions must be paid to the treasurer of the town of Eureka for town purposes.

2570. Board to impose penalties.

SEC. 2570. The town marshal of Eureka is the harbormaster of the port of Eureka. He must enforce and carry into effect such rules and regulations as the board of harbor commissioners may from time to time adopt and publish, and must report to the board any and all violations thereof.

2571. Compensation and expenses.

SEC. 2571. The members of the board must receive the sum of four dollars for every day actually and necessarily employed by them in performing the duties herein prescribed, to be paid from the treasury of the town of Eureka. All expenses necessarily incurred by the board in the performance of their duties, must be paid in the same manner and from the same fund as the members of the board are herein provided to be paid.

2572. Fees of harbormaster.

SEC. 2572. The fees of the harbormaster are prescribed by the board of commissioners, and paid monthly by the board of trustees of the town of Eureka, upon the certificate of the board of commissioners, except such fees as may be provided to be otherwise paid by the board.

ARTICLE XI.

OF SAILORS AND SAILOR BOARDING-HOUSES.

[This entire article from sections 2583 to 2607, inclusive, relating to the "marine board of the port of San Francisco" for licensing sailors' boarding houses and shipping masters, was repealed by act approved December 22, 1877. Amendments 1875-6, 52; took effect from passage. On account of the abolishment of the board, it is deemed useless to give the repealed sections, and they are accordingly omitted.]

CHAPTER II.

HIGHWAYS.

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ARTICLE I.

ENUMERATION OF HIGHWAYS.

2618. What are highways.

SEC. 2618. Highways are roads, streets, or alleys, and bridge laid out or erected by the public, or if laid out or erected by others, dedicated or abandoned to the public.

2619. Origin of highways.

SEC. 2619. Roads laid out and recorded as highways, by order of the board of supervisors, and all roads used as such for a period of five years, are high-

ways. Whenever any corporation owning a toll bridge or a turnpike, plank, or common wagon road is dissolved, or discontinues the road or bridge, or has expired by limitation, the bridge or road becomes a highway.

[The foregoing section, and many subsequent ones, in relation to roads and highways, so far as they applied to the counties of Calaveras, Santa Barbara, San Luis Obispo, Ventura, Fresno, Kern, Tehama, Contra Costa, Marin, Lake, Sierra, Plumas, Sacramento, Sutter, Mendocino, Mariposa, Alameda and Lassen, and also so far as they applied to the counties of Solano, Los Angeles, San Joaquin and Yuba, were amended by act approved March 30, 1874 (Amendments 1873-4, 116), which took effect in the counties first named on the sixtieth day after passage, and in the four counties last named on March 6, 1876. As to the counties not named above, the original sections remain the law, as they did also for the four counties last named, until March 6, 1876. As to the counties named the amendments are the law. See also post, 2755. Sec. 2619 was, as aforesaid, amended so as to read as follows:]

SEC. 2619. Roads laid out and recorded as highways by order of the board of supervisors, are highways. Whenever any corporation owning a toll bridge or a turnpike, plank, or common wagon road, is dissolved, or has expired by limitation or non-user, the bridge or road becomes a highway. [*Amendment, approved March 30, 1874; Amendments 1873-4, 116; took effect as indicated, post, 2755.*]

2620. *Abandonment of highways.*

SEC. 2620. A road not worked or used for the period of five years ceases to be a highway for any purpose whatever.

[Amended for certain counties (see ante, 2619, and post, 2755) as follows:]

SEC. 2620. Roads laid out as provided in section two thousand six hundred and nineteen of this act shall not be vacated or cease to be a highway until so ordered by the board of supervisors. [*Amendment, approved March 30, 1874; Amendments 1873-4, 116; took effect as indicated, post, 2755.*]

2621. *Duties of clerk relative to road matters.*

SEC. 2621. The clerk of the board of supervisors must keep a book in which must be recorded separately all proceedings of the board relative to each road district, including orders laying out, altering, and opening roads; and in a separate book a description of each road district, its overseers, its roads, highways, contracts, and all other matters pertaining thereto.

ARTICLE II.

RULES AND RESTRICTIONS RESPECTING THE USE OF HIGHWAYS.

2631. *The public easement.*

SEC. 2631. By taking or accepting land for a highway the public acquire only the right of way and the incidents necessary to enjoying and maintaining it, subject to the regulations in this and the Civil Code provided. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land, are for the use of the owner or occupant of the land.

[Amended for certain counties (see ante, 2619, and post, 2755) as follows:]

SEC. 2631. By taking or accepting land for a highway, the public acquire only the right of way and the incidents necessary to enjoying and maintaining it, subject to the regulations in this and the Civil Code provided. [*Amendment, approved March 30, 1874; Amendments 1873-4, 116; took effect as indicated, post 2755.*]

2632. *Adjoining owner may construct sidewalk.*

SEC. 2632. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred

by law on the board of supervisors and the overseers of highways; and any person using such sidewalk with horse or team without permission of the owner is liable to such owner or occupant in the sum of five dollars for each trespass and for all damages suffered thereby.

2633. *May plant trees.*

SEC. 2633. Any owner or occupant of land adjoining a highway not less than three rods wide may plant trees on the side contiguous to his land. They must be set in regular rows, at a distance of at least six feet from each other and not more than six feet from the boundary of the highway. If the highway is more than six rods wide the row must not be less than six nor more than twelve feet from the boundary of the highway. Whoever injures any of them is liable to the owner or to the occupant for the damage which is thereby sustained.

2634. *Gas, water, and railroad corporations may lay down conductors and track.*

SEC. 2634. Every gas, water, or railroad corporation has power to lay conductors and tracks through the public ways and squares in any city, village, or town, when it is established, with the consent of the municipal authorities thereof, and under such reasonable regulations as the authorities and the law prescribe.

2635. *Other corporations may acquire right of way.*

SEC. 2635. The cases and manner in which railroad, plank road, turnpike, and common wagon road corporations may acquire a right of way upon the public highways, are provided for in the subsequent chapters of this Code, in Title VII, Part III of THE CODE OF CIVIL PROCEDURE, and under title "Corporations" of THE CIVIL CODE.

[The part of the Code of Civil Procedure referred to will be found post, 11,237.]

ARTICLE III.

POWERS AND DUTIES OF BOARDS OF SUPERVISORS AND HIGHWAY OFFICERS OVER HIGHWAYS.

2645. *Counties classified for highway purposes.*

SEC. 2645. For highway purposes the counties of this state are divided into two classes:

1. Counties having a population of ten thousand inhabitants or over are of the first class;
2. Counties having a population of less than ten thousand are counties of the second class.

[The foregoing section was repealed as to the counties named ante, 2619, and post, 2755, by act approved March 30, 1874; Amendments 1873-4, 117; took effect as indicated post, 2755.]

2646. *Commissioners of highways.*

SEC. 2646. For all counties of the first class there must be elected at the general election every two years some elector of the county to act as commissioner of highways, who holds his office for two years, commencing and ending at the time and in like manner as other ministerial county officers. He must give an official bond in the sum of twenty thousand dollars, executed as other official bonds are executed, and take the usual oath of office. The board of supervisors must order the election, fill vacancies, and exercise a supervisory control over the commissioners of highways.

[Repealed as to certain counties March 30, 1874; Amendments 1873-4, 117; took effect as indicated post, 2755.]

2647. *Duties of commissioners of highways and boards of supervisors.*

SEC. 2647. In the counties of the first class the commissioners of highways, subject to rejection or modification and approval of the board of supervisors,

and in counties of the second class the board of supervisors, by proper ordinances, must:

1. Divide the county into a suitable and convenient number of road districts, and appoint therefor annually, or whenever vacancies occur, overseers, with power to remove them at pleasure;
 2. Cause to be surveyed, viewed, laid out, recorded, opened and worked, such highways as are necessary for public convenience, as in this chapter provided;
 3. Cause to be recorded as highways such roads as have become such by usage or abandonment to the public;
 4. Abolish or abandon such as are unnecessary;
 5. Contract, agree for, purchase or otherwise acquire the right of way over private property for the use of public highways; and for that purpose institute, or require the district attorney to institute, proceedings under Title VII, Part III of THE CODE OF CIVIL PROCEDURE, and to pay therefor from the district road fund of the particular district; [See post, 11,237.]
 6. Let out by contract, the improvement of highways, and the construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds one hundred dollars;
 7. Levy a property road tax;
 8. Order and direct overseers specially in regard to work to be done on particular roads in their districts;
 9. Cause to be erected and maintained on the highways they may designate, milestones or posts, and guide-posts, properly inscribed;
 10. Cause the road tax collected each year to be apportioned to the road districts entitled thereto, and kept by the treasurer in separate funds;
 11. Audit and draw warrants on the funds of the respective road districts when required to pay for right of way or work or improvements thereon.
- [Amended for certain counties (see ante 2619, and post 2755) as follows:]
- SEC. 2647. The board of supervisors of each county, by proper ordinance, must:

1. Divide the county into a suitable and convenient number of road districts, and appoint therefor annually, or whenever vacancies occur, overseers, upon petition of a majority of property taxpayers of the road district, with power to remove for cause;
2. Cause to be surveyed, viewed, laid out, recorded, opened and worked, such highways as are necessary for public convenience, as in this chapter provided;
3. Abolish or abandon such as are unnecessary;
4. Contract, agree for, purchase or otherwise acquire the right of way over private property for the use of public highways, and for that purpose institute, or require the district attorney to institute, proceedings under Title VII, Part III of THE CODE OF CIVIL PROCEDURE, and to pay therefor from the district road fund of the particular district;
5. Let out by contract the improvement of highways and the construction and repair of bridges, or other adjuncts to highways, when the amount of work to be done by contract exceeds three hundred dollars;
6. Levy a property road tax;
7. Order and direct overseers specially in regard to work to be done on particular roads in their districts;
8. Cause to be erected and maintained on the highways they may designate, milestones or posts, and guide-posts, properly inscribed;
9. Cause the road tax collected each year to be apportioned to the road districts entitled thereto, and kept by the treasurer in separate funds;
10. Audit and draw warrants on the funds of the respective road districts, when required to pay for right of way, or work or improvements thereon;

11. Furnish to each road overseer a copy of this chapter. [*Amendments approved March 30, 1874; Amendments 1873-4, 117; took effect as indicated, post 2755.*]

2648. Road districts, how defined and described.

SEC. 2648. The road districts must be carefully and distinctly defined and described, and designated by the municipal towns or townships; until such division is made the road districts of the various counties must continue as they are at present defined. Road districts may be altered, changed, created or modified by the commissioner of highways and the board of supervisors, as occasion requires. When such acts are done by the commissioner, they are subject to rejection, modification and approval by the board.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2648. The road districts must be carefully and distinctly defined and described, and designated by the municipal towns or townships or precinct lines; until such division is made, the road districts of the various counties must continue as they are at present defined. Road districts may be altered, changed, created, or modified by the board of supervisors as occasion requires, and upon petition of a majority of the land owners in any precinct or school district, they shall constitute such precinct or school district a road district. [*Amendment, approved March 30, 1874; Amendments 1873-4, 118; took effect as indicated, post, 2755.*]

2649. Overseers notified to give bond, take oath, etc.

SEC. 2649. Overseers of road districts receive notice of their appointment from the commissioner of highways or the clerk of the board of supervisors, and within ten days thereafter must give the official bond required by the board of supervisors in the order of appointment or confirmation, and take the usual oath of office. The notice and certificate that the bond has been filed, and the oath taken and indorsed thereon, or a certified copy thereof, constitutes a commission, and authorizes the person named in and holding the same to discharge the duties of overseer until superseded.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2649. Overseers of road districts receive notice of their appointment from the clerk of the board of supervisors, and within ten days thereafter must give the official bond required by the board of supervisors in the order of appointment or confirmation, and take the usual oath of office. The notice and certificate that the bond has been filed, and the oath taken and indorsed thereon, or a certified copy thereof, constitutes a commission, and authorizes the person named in and holding the same to discharge the duties of overseer, until superseded. [*Amendment, approved March 30, 1874; Amendments 1873-4, 118; took effect as indicated, post, 2755.*]

2650. Duties of road overseer.

SEC. 2650. Road overseers, under the direction and supervision and pursuant to orders of the commissioner of highways or the board of supervisors appointing them, must:

1. Take charge of the public highways within their respective districts;
2. Keep them clear from obstructions and in good repair;
3. Cause banks to be graded, bridges and causeways to be made where necessary, keep the same in good repair, and renew them when destroyed;
4. Give two days' notice to the inhabitants of his road district liable to do work on roads, when, where, with what implements, and under whose direction to work, and superintend the same;
5. Collect, from each inhabitant notified to work and who fails to work or prefers to pay it, the commutation fee;

6. Make semi-annual reports of all labor performed in his district, and how all road poll tax and commutation moneys were expended, to the commissioner of highways or board of supervisors, under oath;

7. Receive and present petitions for new roads, recommend or disapprove the same, and assist in laying them out;

8. Collect all road poll taxes in the mode provided for the collection of other poll taxes, and faithfully account for and pay over the same;

9. Pay over to his successor, or into the fund of his road district in the county treasury, all road moneys in his hands and unexpended;

10. Receive for his services, from money coming into his hands belonging to his road district, the sum of three dollars for each day's service performed by him, to be audited and ordered paid by the board of supervisors.

[Amended for certain counties (see ante 2619, and post 2755), as follows:]

SEC. 2650. Road overseers, under the direction and supervision, and pursuant to orders of the board of supervisors appointing them, must:

1. Take charge of the public highways within their respective districts;

2. Keep them clear from obstructions and in good repair;

3. Cause banks to be graded, bridges and causeways to be made where necessary, keep the same in good repair, and renew them when destroyed;

4. Give two days' notice to the inhabitants of his road district liable to do work on roads, when, where, with what implements, and under whose direction to work, and superintend the same;

5. Collect from each inhabitant notified to work, and who fails to work or prefers to pay it, the commutation fee;

6. Make semi-annual reports of all labor performed in his district, and how all road poll tax and commutation moneys were expended, to the board of supervisors, under oath;

7. Receive and present petitions for new roads, recommend or disapprove of the same, and assist in laying them out;

8. Collect all road poll taxes in the mode provided for the collection of other poll taxes, and faithfully account for and pay over the same;

9. Pay over to his successor, or into the fund of his road district in the county treasury, all road moneys in his hands and unexpended;

10. Receive for his services, from money coming into his hands belonging to his road district, the sum of three dollars for each day's service performed by him, not to exceed three hundred dollars per annum, to be audited and ordered paid by the board of supervisors; provided, that each road overseer in the county of Sierra shall receive four dollars per day for each day's service performed by him. [*Amendment, approved March 30, 1874; Amendments 1873-4, 119; took effect as indicated, post, 2755.*]

2651. *Commissioner of highways, duties.*

SEC. 2651. The commissioner of highways must attend each session of the board of supervisors, when road matters of the county are under consideration, and consult with and advise them of all matters pertaining to the roads of the county; and must supervise and correct the list of inhabitants liable to road service in each district in the county; distribute to road overseers their respective lists of assessments; see that they collect and apply the same; receive reports from road overseers and report the same semi-annually to the board of supervisors.

[Repealed as to certain counties March 30, 1874; Amendments 1873-4, 120; took effect as indicated post, 2755.]

2652. *Compensation of commissioner of highways.*

SEC. 2652. The commissioner of highways must receive a salary of one thou-

sand dollars per annum, to be paid quarterly by order of the board of supervisors from the aggregate road tax collected and paid into the county treasury for road purposes, which must be set apart for such purpose prior to the distribution of the same among the road districts.

[Repealed as to certain counties March 30, 1874; Amendments 1873-4, 120; took effect as indicated post, 2755.]

2653. *General road fund for general road purposes.*

SEC. 2653. From the road tax collected from all sources the board of supervisors may annually set apart a sum not exceeding fifteen per cent. of the aggregate for general county road purposes, from which they may direct such amounts to be paid as may be found necessary for such general road purposes in which the inhabitants of all the districts are more or less interested. The object of the appropriation must be specified in each order made therefor.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2653. From the property road tax collected from all sources, the board of supervisors may annually set apart a sum not exceeding twenty per cent. of the aggregate for general county road purposes, from which they may direct such amounts to be paid as may be found necessary for such general road purposes, in which the inhabitants of all the districts are more or less interested. The object of the appropriation must be specified in each order made therefor. The board shall have no power to create debt on any road district in excess of ten per cent. on the estimated amount of the tax receipts from said district for the next ensuing year. [*Amendment, approved March 30, 1874; Amendments 1873-4, 120; took effect as indicated, post, 2755.*]

2654. *Bonds of road district for macadamizing.*

SEC. 2654. Upon a petition signed by a majority of persons liable to pay a road tax of any kind, and also of those owning a majority of the taxable property in any road district, the board of supervisors, for the purpose of macadamizing the roads of such district (but for no other purpose), may issue bonds of the road district not exceeding in the aggregate five per cent. of the taxable property thereof. The bonds so issued shall bear interest at the rate of eight per cent. per annum, payable annually, and must be redeemed within five years from date of issuance. The board must also levy a tax annually, not exceeding one and one eighth of one per cent., for the payment of interest and a part of the principal of such bonds, until the entire amount of bonds issued are redeemed. The provisions of this section shall apply to any bonds heretofore issued for the purposes therein mentioned. [*New section, approved March 30, 1874; Amendments 1873-4, 38; took effect July 6, 1874.*]

ARTICLE IV.

HIGHWAY TAXES.

2657. *Who owe a road poll tax.*

SEC. 2657. Every male inhabitant of a road district over twenty-one and under fifty years of age must perform two days' labor annually, to be known as the road poll tax, upon the roads and highways of the district, under the demand and direction of the road overseer thereof; or pay to such overseer a commutation fee of four dollars, or such smaller amount as may be fixed as the commutation fee by the board of supervisors.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2657. Every male inhabitant of a road district, over twenty-one and under fifty years of age, must perform two days' labor, annually, to be known as the road poll tax, upon the roads and highways of the district, under the

demand and direction of the road overseer thereof, or pay to such overseer a commutation fee of four dollars. [*Amendment, approved March 30, 1874; Amendments 1873-4, 120; took effect as indicated, post, 2755.*]

2658. *Overseers to make a list of inhabitants.*

SEC. 2658. Each road overseer must, within twenty days after being notified of his appointment and qualification, deliver to the clerk of the board of supervisors, or to the commissioner of highways, a list of the inhabitants of his district liable for the road poll tax therein. This list must be laid before the board of supervisors at their first meeting held thereafter.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2658. Each road overseer must, within twenty days after being notified of his appointment and qualification, deliver to the clerk of the board of supervisors a list of the inhabitants of his district liable for the road poll tax therein. This list must be laid before the board of supervisors at their first meeting held thereafter. [*Amendment, approved March 30, 1874; Amendments 1873-4, 120; took effect as indicated, post, 2755.*]

2659. *Levy of road poll tax, when and how made.*

SEC. 2659. The board of supervisors must each year, prior to the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year over and above the road poll tax, and must regulate and fix the amount of property highway tax, and levy the same thereby; and, at the same time, the board of supervisors must fix the commutation fee for the road poll tax at an amount not exceeding four dollars.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2659. The board of supervisors must, each year, prior to the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year over and above the road poll tax, and must regulate and fix the amount of property highway tax, and levy the same thereby. [*Amendment, approved March 30, 1874; Amendments 1873-4, 121; took effect as indicated, post, 2755.*]

[There are special laws in various counties as to the collection of the road poll tax, which will be found noted under the heads of the respective counties having them.]

2660. *Road poll tax receipts.*

SEC. 2660. At the time of fixing the commutation fee, the board of supervisors must provide proper blank road poll tax receipts, to be signed by the clerk of the board; and must deliver to each road overseer, or the commissioner of highways for such overseers, a number to each equal to the number of inhabitants of their respective districts liable for road poll tax, take receipts therefor, and charge the road office receiving the same therewith; but credit must be given to each road overseer for all unsold blank road poll tax receipts returned to the clerk of the board of supervisors.

[Amended for certain counties (see ante 2619, and post 2755), as follows:]

SEC. 2660. The board of supervisors must provide proper blank road poll tax receipts, to be signed by the clerk of the board; and must deliver to each road overseer a number to each equal to the number of inhabitants of their respective districts liable for road poll tax, take receipt therefor, and charge the road office receiving the same therewith; but credit must be given to each road overseer for all unsold blank road poll tax receipts returned to the clerk of the board of supervisors. [*Amendment, approved March 30, 1874; Amendments 1873-4, 121; took effect as indicated, post, 2755.*]

2661. *Tax list made out—Tax collected and applied.*

SEC. 2661. In counties of the first class the commissioner of highways, and of the second class the road overseers, must make out lists of the inhabitants of the road districts liable for road poll tax, and require of each the performance of the labor or the payment of the commutation fee fixed by the board of supervisors, and apply such labor and commutation money in the opening, maintenance, and repair of the highways and adjuncts in their respective road districts. The lists, when prepared by the commissioner, must be placed in the hands of the road overseers for the purposes in this section named.

[Amended for certain counties (see ante 2619, and post 2755), as follows:]

SEC. 2661. Road overseers must make out lists of the inhabitants of the road districts liable for road poll tax, and require of each the performance of the labor or the payment of the commutation, and apply such labor and commutation money in the opening, maintenance, and repair of the highways and adjuncts in their respective road districts. [*Amendment, approved March 30, 1874; Amendments 1873-4, 121; took effect as indicated, post, 2755.*]

2662. *Overseers to add omitted and new inhabitants.*

SEC. 2662. The commissioner of highways and road overseers must from time to time add to the lists the names of persons liable for road poll tax who were omitted or who have become inhabitants of his district since the original list was made, and enforce the road poll tax or collect the commutation fee therefor, and apply the same as hereinbefore provided.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2662. The road overseers must, from time to time, add to the lists the names of persons liable for road poll tax, who were omitted, or who have become inhabitants of his district since the original list was made, and enforce the road poll tax, or collect the commutation fee therefor, and apply the same as hereinbefore provided. [*Amendment, approved March 30, 1874; Amendments 1873-4, 122; took effect as indicated, post 2755.*]

2663. *Annual property road tax, how levied, collected, etc.*

SEC. 2663. The annual property tax for road purposes must be levied by the board of supervisors at their session when the tax is by them levied for county purposes, and must not exceed thirty cents on each one hundred dollars in value of taxable property. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other state and county taxes are levied, assessed, and collected, and turned over to the county treasurer for the use of the road districts from which it is respectively collected.

2664. *Cities and towns not to pay tax.*

SEC. 2664. The road poll and property tax herein provided for must not be levied or collected from the inhabitants or property of incorporated towns and cities which by municipal authority levy such taxes for the streets and alleys thereof. Bridges crossing the line between cities or towns and road districts, must be constructed by the cities or towns and the road fund of the road districts into which such bridges reach, proportionally.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2664. Bridges crossing the line between cities or towns and road districts, must be constructed by the cities or towns and the road fund of the road districts into which such bridges reach, proportionally; provided, that the board of supervisors may order the whole expense of constructing or repairing said bridges out of the general road fund of the county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 122; took effect as indicated, post, 2755.*]

ARTICLE V.

PERFORMANCE OF HIGHWAY LABOR AND COMMUTATION.

2680. *Persons must not work out of district.*

SEC. 2680. Road overseers must not require an individual to work out of the district in which he resides.

2681. *Employers responsible for highway labor assessed to employees.*

SEC. 2681. Corporations or other employers of residents in any highway district, are responsible for the road poll tax assessed against their employees, and a notice to the employer or managing agent requiring the payment of the road poll tax of the employee, charges such employer or corporation with such road poll tax.

2682. *Penalty for loss of time or idleness—Substitutes.*

SEC. 2682. Each person appearing must actually work eight hours each day, to be credited to him by the overseer; for every hour unnecessarily lost or idled away he must be charged two hours, to be worked out on some other day under notice from the overseer. Any person may work by an able-bodied substitute.

2683. *Penalty neglect.*

SEC. 2683. Every person receiving due notice, who does not appear and labor or commute, is delinquent.

2684. *Excuse for neglect no exemption.*

SEC. 2684. The overseer's acceptance of an excuse for a neglect in no case exempts the person excused from performing or commuting for the whole number of days work for which he was assessed.

2685. *Overseers, to whom and what to report.*

SEC. 2685. Every overseer must make to the commissioner of highways or board of supervisors, semi-annually, a written account, under oath, containing:

1. The names of all persons assessed to work in his district;
2. The names of all who have actually worked, and the number of days;
3. The names of all who have commuted, and the amount received from them;
4. The names of all delinquents, and the amount collected from them;
5. A full return by items of the amount of labor and money expended at each separate point, and the manner in which, and the time when the same was done;
6. The number of road poll tax receipts sold, and those returned unsold;
7. An accurate account of every day he himself was employed, and the nature and items of the service rendered.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2685. Every overseer must make to the board of supervisors, semi-annually, a written account, under oath, containing:

1. The names of all persons assessed to work in his district;
2. The names of all who have actually worked, and the number of days;
3. The names of all who have commuted, and the amount received from them;
4. The names of all delinquents, and the amount collected from them;
5. A full return by items of the amount of labor and money expended at each separate point, and the manner in which, and the time when the same was done;
6. The number of road poll tax receipts sold, and those returned unsold;
7. An accurate account of every day he himself was employed, and the nature and items of the service rendered. [Amendment, approved March 30, 1874; Amendments 1873-4, 122; took effect as indicated, post, 2755.]

2686. Reports, by whom and what.

SEC. 2686. The commissioner of highways and the board of supervisors may require special reports from road overseers when deemed proper. The commissioner of highways must report to the board of supervisors all reports of road overseers made to him, showing all the facts contained in their reports made to him.

[Repealed as to certain counties March 30, 1874; Amendments 1873-4, 123; took effect as indicated, post, 2755.]

2687. Report of unexpended moneys.

SEC. 2687. The commissioner of highways and road overseers must accompany their reports with all unexpended moneys remaining in their hands at the date of the report, and a statement of all moneys in the county treasury to the credit of their road district.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2687. Road overseers must accompany their reports with all unexpended moneys remaining in their hands at the date of the report. [*Amendment, approved March 30, 1874; Amendments 1873-4, 123; took effect as indicated, post, 2755.*]

2688. Penalty for failure to report or pay over.

SEC. 2688. A failure to make a report as required, or to pay over, on the order of the commissioner of highways or of the board of supervisors, any moneys in his hands, subjects the overseer to a penalty of twenty-five dollars, to be recovered in an action on his bond, together with any balance due from him; suit therefor may be instituted by the commissioner of highways or district attorney, under order of the board of supervisors.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2688. A failure to make a report as required, or to pay over, on the order of the board of supervisors, any moneys in his hands, subjects the overseer to a penalty of twenty-five dollars, to be recovered in an action on his bond, together with any balance due from him. Suit therefor may be instituted by the district attorney, under order of the board of supervisors. [*Amendment, approved March 30, 1874; Amendments 1873-4, 123; took effect as indicated, post, 2755.*]

ARTICLE VI.

LAYING OUT, ALTERING AND DISCONTINUING ROADS.

2698. Who may apply for change.

SEC. 2698. Any ten inhabitants of a road district taxable therein for road purposes may petition in writing the commissioner of highways or the board of supervisors to alter or discontinue any road, or to lay out a new road therein.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2698. Any ten inhabitants of a road district, taxable therein for road purposes, may petition in writing the board of supervisors, to alter or discontinue any road, or to lay out a new road therein. [*Amendment, approved March 30, 1874; Amendments 1873-4, 123; took effect as indicated, post, 2755.*]

2699. What the petition must show.

SEC. 2699. The petition must set forth and describe particularly the road to be abandoned, discontinued, altered, or constructed, and the general route thereof, over what lands, and who the owners thereof are, whether the owners consent thereto, and if not, the probable cost of the right of way, the necessity for and the advantages of the proposed change.

2700. *The petitioners to give bonds for costs.*

SEC. 2700. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the supervisors, in double the amount of the probable cost of the viewing and laying out or altering of any road, conditioned that the bondsmen will pay all the costs of viewing and surveying in case the prayer is not granted and the road finally not opened.

2701. *Supervisors to order change and appoint viewers.*

SEC. 2701. Upon filing such petition and bond, the board of supervisors must appoint three viewers, one of whom must be a surveyor, to view and survey any proposed alteration of an old or opening of a new road, to be made in accordance with the description in the petition, and submit to the board an estimate of the cost of the change, alteration, or opening, including the purchase of the right of way and their views of the necessity thereof.

2702. *Viewers to be appointed, and their duties.*

SEC. 2702. The road viewers must be disinterested citizens of the county, but not petitioners; they must be sworn to discharge their duties faithfully; must view and lay out the proposed alteration or new road over the most practicable route; notify the owners of land over which it passes of the proposed route; ascertain whether the owners consent thereto, and the amount, if any, they claim or demand for the right of way over the same; estimate the actual damage to any land over which it passes, and the cost of any bridges or grading necessary; the necessity for and public convenience to be subserved by the road, and whether the opening thereof or change therein proposed should be had.

2703. *Report of viewers.*

SEC. 2703. When the view and survey of the proposed alteration or new road is completed the viewers must report to the board of supervisors:

1. The course, termini, length, and cost of construction of the proposed road;
2. The estimate of damage to the owner of any land over which it is proposed to run the road;
3. The names of landowners who consent to give the right of way, and their written consent thereto;
4. The names of landowners who do not consent, and the amount of damage claimed by each;
5. Such other facts bearing upon the subject of importance to be known by the board of supervisors.

2704. *Report not to be approved, when.*

SEC. 2704. No report of viewers must by the board of supervisors be approved which, without the consent of the owner and occupant, runs the road:

1. Through an orchard of four years growth;
2. Through a garden or yard four years cultivated;
3. Through buildings or fixtures, or erections for the purposes of residence, trade, or manufacture;
4. Through inclosures necessary for the use or enjoyment of the buildings, fixtures, or erections; or
5. Through inclosed or improved lands;

Unless the board of supervisors are satisfied, from personal examination and observation, or from the sworn statement of at least twelve respectable residents of the road district, that the opening of such road through such premises is an absolute necessity, a great public benefit, or a great convenience to a moiety of the inhabitants of the district.

[Amended for certain counties (see ante 2619, and post 3755) as follows:]

SEC. 2704. No report of viewers must, by the board of supervisors, be ap-

proved which, without the consent of the owner and occupant, would have the effect to open a road :

1. Through an orchard of four years growth;
2. Through a garden or yard four years cultivated;
3. Through buildings, or fixtures, or erections for the purposes of residence, trade, or manufacture;
4. Through inclosures necessary for the use or enjoyment of the buildings, fixtures, or erections; or,
5. Through inclosed or improved lands; unless the board of supervisors are satisfied, from personal examination and observation, or from the sworn statement of at least five residents of the road district, that the opening of such road through such premises is a necessity, a great public benefit, or a great convenience to a moiety of the inhabitants of the district. [*Amendment, approved March 30, 1874; Amendments 1873-4, 124; took effect as indicated, post, 2755.*]

2705. *Viewers and surveyors how paid, and on what certificate.*

SEC. 2705. The viewers must be paid three dollars each per day for their services out of the road fund of the district through which the road passes, and the surveyor his legal fees for services in running out and mapping the road and making the plat and field notes, which must be filed when required before he receives his compensation.

2706. *Proceedings of board in hearing report.*

SEC. 2706. The board of supervisors, on the coming in of the report, must fix a day for hearing the same, must notify the owners of land not consenting to give the right of way of the hearing, by having written notice served on them personally, or on the occupant or agent of the owner, or if neither, by posting notice at the most conspicuous place on the land, or left at the owner's, agent's, or occupant's residence ten days prior to the day fixed for the hearing; and must, on the day fixed or to which it may be postponed or adjourned, hear evidence and proof from all parties interested for and against the proposed alteration or new road, ascertain, and by order declare, the amount of damage awarded to each non-consenting landowner, and declare the report of the viewers to be approved or rejected. If the report is rejected the road must not be altered or opened.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2706. The board of supervisors, on the coming in of the report, must fix a day for hearing the same; must notify the owners of land not consenting to give the right of way of the hearing, by having written notice served on them personally, or on the occupant or agent of the owner; or if neither, by posting notice at the most conspicuous place on the land, or left at the owner's, agent's, or occupant's residence ten days prior to the day fixed for the hearing; and must, on the day fixed, or to which it may be postponed or adjourned, hear evidence and proof from all parties interested for and against the proposed alteration or new road; ascertain, and by order declare, the amount of damage awarded to each non-consenting landowner, and declare the report of the viewers to be approved or rejected. [*Amendment, approved March 30, 1874; Amendments 1873-4, 124; took effect as indicated, post, 2755.*]

2707. *Effect of, and proceedings on approval of viewers' report.*

SEC. 2707. If the board approve the report, and there are no non-consenting landowners, the road must, by order, be declared a public highway, and the commissioner of highways or the road overseer ordered to open the same to the public. If there are non-consenting landowners the board must appropriate from the road fund of the district, and cause the commissioner and road over-

seer to tender to such non-consenting landowners the award for damages made by the board. If the awards are all accepted the road must be declared a public highway and be opened as before provided.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2707. If the board approve the report, and there are no non-consenting landowners, the road must, by order, be declared a public highway, and the road overseer ordered to open the same to the public. If there are non-consenting landowners, the board must appropriate from the road fund of the district, and cause the road overseer to tender to such non-consenting landowners the award for damages made by the board. If the awards are all accepted, the road must be declared a public highway, and be opened as before provided. [*Amendment, approved March 30, 1874; Amendments 1873-4, 125; took effect as indicated, post, 2755.*]

2708. *Proceedings to procure right of way.*

SEC. 2708. If any award of damages is rejected by the landowners the board must, by order, direct proceedings to procure the right of way to be instituted by the commissioner of highways, or district attorney of the county, under and as provided in Title VII, Part III, of the Code of Civil Procedure, against all non-accepting landowners, and when thereunder the right of way is procured, the road must be declared a public highway and opened as hereinbefore provided.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2708. If any award of damages is rejected by the landowners, the board must, by order, direct proceedings to procure the right of way to be instituted by the district attorney of the county, under and as provided in Title VII, Part III, of the Code of Civil Procedure, against all non-accepting landowners, and when thereunder the right of way is procured, the road must be declared a public highway, and opened as hereinbefore provided. But if any non-consenting landowner does not recover a greater amount of damages than shall have been allowed him by the board of supervisors, then he shall pay all costs and expenses incurred by reason of any suit or other proceedings instituted in the matter. [*Amendment, approved March 30, 1874; Amendments 1873-4, 125; took effect as indicated, post, 2755.*]

[The part of the Code of Civil Procedure referred to will be found post, 11,237.]

2709. *Awards, how and by whom paid.*

SEC. 2709. All awards by agreement, ascertainment by the board, or by the proper court, must be paid out of the road fund of the district on the order of the board of supervisors. If the road lies in more than one district the supervisors must proportionately divide the awards and other costs between them.

2710. *Width of highways.*

SEC. 2710. All highways must be at least fifty feet wide, except those now existing of a less width.

2711. *Private roads, how opened.*

SEC. 2711. Private or by-roads may be opened for the convenience of one or more residents of any road district in the same manner as public roads are opened, whenever the board of supervisors may for like cause order the same to be viewed and opened, the person for whose benefit the same is required paying the damages awarded to landowners, and keeping the same in repair.

2712. *Conveyances or decrees of condemnation of lands to be recorded.*

SEC. 2712. In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned, and paid for, either an instrument in writing conveying the right of way and incidents thereto, signed and

acknowledged by the party making it, or a certified copy of the decree of the court condemning the same, must be made and filed and recorded in the office of the recorder of the county, in which the land so conveyed or condemned must be particularly described.

2713. *Roads crossing railroads, canals, or ditches.*

SEC. 2713. Whenever highways are laid out to cross railroads, canals, or ditches on public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals, or ditches that the public highway may cross the same without danger or delay; and when the right of way for a public highway is obtained through the judgment of any court over any railroad, canal, or ditch, no damages must be awarded for the simple right to cross the same.

2714. *Fence to be removed, how.*

SEC. 2714. When the alteration of an old or the opening of a new road makes it necessary to remove fences on land given, purchased, or condemned by order of a court for road or highway purposes, notice to remove the fences must be given by the road overseer or commissioner of highways to the owner, his occupant, or agent, or by posting the same on the fence, and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the commissioner of highways or road overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2714. When the alteration of an old, or the opening of a new road, makes it necessary to remove fences on land given, purchased, or condemned by order of a court, for road or highway purposes, notice to remove the fences must be given by the road overseer to the owner, his occupant, or agent, or by posting the same on the fence, and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the road overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment. [*Amendment, approved March 30, 1874; Amendments 1873-4, 126; took effect as indicated, post, 2755.*]

ARTICLE VII.

ERECTION AND MAINTENANCE OF BRIDGES.

2724. *Bridges, how maintained and by whom.*

SEC. 2724. All public bridges not otherwise specially provided for, are maintained by the road district in which they are situate, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the commissioner of highways, road overseer, and board of supervisors, the expense of constructing, maintaining, and repairing the same being primarily payable out of the road fund of the district in the hands of the road overseer or county treasurer, and from road poll taxes.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2724. All public bridges not otherwise specially provided for, are maintained by the road district in which they are situate, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the road overseer and the board of supervisors, the expense of constructing, maintaining, and repairing the same, being primarily payable out of the road fund of the district, in the hands of the road overseer or county treasurer, and from road poll taxes. [*Amendment, approved March 30, 1874; Amendments 1873-4, 126; took effect as indicated, post, 2755.*]

2725. *When aid may be given by county for bridge.*

SEC. 2725. Whenever it appears to the board of supervisors that any road district is or would be unreasonably burdened by the expense of constructing or maintenance and repair of any bridge, they may, in their discretion, cause a portion of the aggregate cost or expense to be paid out of the general road fund of the county, or out of the general county fund, or both, or they may levy a special bridge tax therefor, not exceeding one fourth of one per cent. on the taxable property of the county, annually, till the amount appropriated in aid is raised and paid. In the county of Tehama the amount raised for any one bridge shall not exceed the sum of ten thousand dollars for any one year, unless the proposition to raise the amount is first submitted to a vote of the people of the county in the manner and at the time and under such rules as the board may prescribe and a majority of the votes are in favor of the proposition. [*Amendment, approved March 30, 1874; Amendments 1873-4, 130; took effect immediately.*]^(a)

2726. *Construction and repair of bridges to be let out by contract.*

SEC. 2726. No bridge, the cost of the construction or repair of which will exceed the sum of one hundred dollars, must be constructed or repaired except on order of the board of supervisors. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the board of supervisors, through the commissioner of highways or road overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices—one at the court-house, one at the point to be bridged, and one at some other neighboring public place; the bids to be sealed, opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into to the approval of the board of supervisors.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2726. No bridge, the cost of the construction or repair of which will exceed the sum of three hundred dollars, must be constructed or repaired, except on order of the board of supervisors. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the board of supervisors, through the road overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices—one at the court-house, one at the point to be bridged, and one at some other neighboring public place. The bids to be sealed, opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into to the approval of the board of supervisors. [*Amendment, approved March 30, 1874; Amendments 1873-4, 126; took effect as indicated, post, 2755.*]

2727. *When one overseer fails to aid, who may repair bridge.*

SEC. 2727. If the road overseer of one road district, after five days' notice from the overseer of an adjoining district to aid in the repair of a bridge in which each are interested, fails so to aid, the one giving notice may make the necessary repairs, and must be allowed a pro rata compensation therefor by the board of supervisors out of the road fund of the defaulting district.

2728. *Overseer failing, how bridge repaired.*

SEC. 2728. If the overseer of any road district chargeable with the repair of a bridge fails to make the needed repairs after being informed that a bridge is impassable or unsafe, and is requested to make the same by two or more freeholders of the district in which it is situate, or the two districts which it unites,

(a) The original section did not have the last sentence commencing with the words "In the county of Tehama."

the freeholders may represent the facts to the board of supervisors, who, upon being satisfied that the bridge is unsafe, must cause the same to be repaired, and must pay therefor from the funds of the district chargeable therewith.

2729. *Construction of bridge petitioned for and notice.*

SEC. 2729. When a bridge, the cost of which will exceed one hundred dollars, is necessary, any five or more freeholders of the road districts interested therein may petition the board of supervisors for the erection of such needed bridge. The board must thereupon advertise such application, giving the location and other facts, for two weeks in a newspaper printed in the county; if none, then by posters—one at the proposed location, one at the court-house, and one at some other public place in the county, and notify the overseer or commissioner of highways to attend at a certain time and place to hear the application.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2729. When a bridge, the cost of which will exceed three hundred dollars, is necessary, any five or more freeholders of the road district interested therein may petition the board of supervisors for the erection of such needed bridge. The board must thereupon advertise such application, giving the location and other facts, for two weeks, in a newspaper printed in the county; if none, then by posters—one at the proposed location, one at the court-house, and one at some other public place in the county, and notify the overseer to attend at a certain time and place to hear the application. [*Amendment, approved March 30, 1874; Amendments 1873-4, 127; took effect as indicated, post, 2755.*]

2730. *If found necessary, the bridge to be built.*

SEC. 2730. On the day fixed to hear the application, proof of the notice given being made satisfactory, the board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary as petitioned for; if found to be so, the board must determine the character of bridge to be constructed, prepare plans and specifications, invite bids, let the contract, and have the same erected, and provide for the payment therefor as herein provided.

2731. *Report of officers to embrace bridges.*

SEC. 2731. The commissioner of highways and road overseers must, in their official reports, give a full account of all bridges of which they have in whole or in part the charge and maintenance, those constructed or repaired, and the cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2731. Road overseers must, in their official reports, give a full account of all bridges of which they have in whole or in part the charge and maintenance, those constructed or repaired, and the cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof. [*Amendment, approved March 30, 1874; Amendments 1873-4, 127; took effect as indicated, post, 2755.*]

2732. *Semi-annual meeting for highway purposes.*

SEC. 2732. The county is responsible for providing and keeping passable and in good repair bridges on all public highways, and the supervisors must appoint semi-annually a special meeting, at which the commissioner of highways and road overseers, on days set apart for their respective districts, to hear highway and bridge reports and complaints from officers and citizens, when such orders must be made and such action had regarding the same as the public welfare demands.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2732. The county is responsible for providing and keeping passable and

in good repair, bridges on all public highways, and the supervisors must appoint semi-annually a special meeting, at which the road overseers, on days set apart for their respective districts, to hear highway and bridge reports and complaints from officers and citizens, when such orders must be made, and such action had regarding the same, as the public welfare demands. [*Amendment, approved March 30, 1874; Amendments 1873-4, 128; took effect as indicated, post, 2755.*]

ARTICLE VIII.

OBSTRUCTIONS AND INJURIES TO HIGHWAYS.

2743. *Removal of encroachments.*

SEC. 2743. If any highway duly laid out or erected is encroached upon by fences, buildings, or otherwise, the commissioner of highways or road overseer of the district may, orally or in writing, require the encroachment to be removed from the highway.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2743. If any highway, duly laid out or erected, is encroached upon by fences, buildings, or otherwise, the road overseer of the district may, orally or in writing, require the encroachment to be removed from the highway. [*Amendment, approved March 30, 1874; Amendments 1873-4, 128; took effect as indicated, post, 2755.*]

2744. *Notice to remove encroachment.*

SEC. 2744. Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he reside in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days.

2745. *Penalty for neglect.*

SEC. 2745. If the encroachment is not removed or commenced to be removed and diligently prosecuted prior to the expiration of the ten days from the service or posting the notice, the one who caused or owns or controls the encroachment forfeits ten dollars for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for vehicles, the overseer must forthwith remove the same.

2746. *If encroachment denied, action for nuisance to be brought.*

SEC. 2746. If the encroachment is denied, and the owner, occupant or person controlling the matter or thing charged with being an encroachment refuses either to remove or to permit the removal thereof, the commissioner of highways or road overseer must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment, he may in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, as also his costs in such action.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2746. If the encroachment is denied, and the owner, occupant or person controlling the matter or thing charged with being an encroachment, refuses either to remove or to permit the removal thereof, the road overseer must commence, in the proper court, an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, and also his costs in such action. [*Amendment, approved March 30, 1874; Amendments 1873-4, 128; took effect as indicated, post, 2755.*]

2747. *If encroachment not denied, how removed.*

SEC. 2747. If the encroachment is not denied, but is not removed for five

days after the notice is complete, the commissioner of highways or road overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as also for each day the same remained after notice was complete the sum of ten dollars, in an action for that purpose.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2747. If the encroachment is not denied, but is not removed for five days after the notice is complete, the road overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as also for each day the same remained after notice was complete the sum of ten dollars, in an action for that purpose. [*Amendment, approved March 30, 1874; Amendments 1873-4, 128; took effect as indicated, post, 2755.*]

2748. *No gate allowed, except where.*

SEC. 2748. No gates must be allowed on any public highway duly laid out, except on highways running through lands subject to overflow to such extent as to remove the fences. When so allowed they must be erected and maintained at the expense of the owner or occupant at whose request or for whose benefit they were erected. If such expense is not paid, the gate must be removed as an obstruction.

2749. *Penalty for leaving open gate or riding off the road.*

SEC. 2749. Any one who leaves open such gate, or willfully and unnecessarily rides over ground adjoining the road on which the gate is erected, forfeits to the injured party treble damages.

2750. *Penalty for obstruction or injury.*

SEC. 2750. Whoever obstructs or injures any highway, or obstructs or diverts any watercourse thereon, is liable to a penalty of five dollars for each day such obstruction or injury remains, and must be punished as provided in section 588 of the Penal Code.

2751. *Penalty for injuring milestone and guide-post.*

SEC. 2751. Whoever removes or injures any mileboard, or milestone, or guide-post, or any inscription on such, erected on any highway, is liable to a penalty of ten dollars for every such offense, and punishable as provided in section 590 of the Penal Code.

2752. *Removal of fallen trees.*

SEC. 2752. Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway to remove such tree or obstruction forthwith. If it is not so removed the owner or occupant is liable to a penalty of one dollar for every day thereafter till it is removed and the cost of removal.

2753. *Unauthorized felling of trees.*

SEC. 2753. Whoever cuts down a tree so that it falls into any highway, must forthwith remove the same, and is liable to a penalty of five dollars for every day the same remains in such highway.

2754. *Notice on bridges, and penalty for disregarding.*

SEC. 2754. The commissioner of highways and road overseers may put up on bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridges is liable to five dollars for each offense.

[Amended for certain counties (see ante 2619, and post 2755) as follows:]

SEC. 2754. Road overseers may put up on bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than

a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay five dollars for each offense. [*Amendment, approved March 30, 1874; Amendments 1873-4, 129; took effect as indicated, post, 2755.*]

2755. *Destroying shade or ornamental trees.*

SEC. 2755. Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree planted and standing on any highway forfeits twenty-five dollars for each such tree.

[Amended for certain counties (see also ante, 2619) as follows:]

SEC. 2755. Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree, unless the same may be deemed an obstruction by the road overseer, and removed under his direction, planted or standing on any highway, forfeits twenty-five dollars for each such tree. [*Amendment, approved March 30, 1874; Amendments 1873-4, 129; took effect as indicated below.*]

[The amendatory act of March 30, 1874 (Amendments 1873-4, 116), by the operation of which many of the foregoing sections, commencing with 2619, were amended or repealed, as indicated under the respective sections, contained an additional section, as follows:]

SEC. 38. This act shall apply only to the following named counties: Calaveras, Santa Barbara, San Luis Obispo, Ventura, Fresno, Kern, Tehama, Contra Costa, Marin, Lake, Sierra, Plumas, Sacramento, Sutter, Mendocino, Mariposa, Alameda, and Lassen; provided, that this act shall not be in force and effect in Solano, Los Angeles, San Joaquin, and Yuba counties, until the first Monday of March, 1876. [*Section of Amendatory Act, approved March 30, 1874; Amendments 1873-4, 129; took effect on sixtieth day after passage.*]

2756. *Application of penalties.*

SEC. 2756. All penalties or forfeitures given in this chapter, and not otherwise provided for, must be recovered by the commissioner of highways or road overseers of the respective road districts, and be applied on the highways in which they are collected.

2757. *Road laws now in force not affected by code.*

SEC. 2757. Nothing in this chapter affects the provisions of any statute in relation to roads and highways now in force and made applicable to one or more counties by name; but whenever any such statute is repealed then the provisions of this chapter are applicable to the county named in the statute repealed.

CHAPTER III.

TOLL ROADS.

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ARTICLE I.

CONSTRUCTION OF TOLL ROADS.

2779. *Notice of and application to construct the road.*

SEC. 2779. If all lands necessary for the road-bed and other purposes are not otherwise acquired as hereinafter provided, the company proposing to construct a toll road through any part of a county must publish a notice in some newspaper published therein, and if none, then the newspaper nearest thereto, once in each week for six consecutive weeks, specifying the character of the road, the termini, and each town, city, or village through which it is proposed to construct it, and the time when the application hereinafter required will be made. After

such notice is complete, on the day specified therein, application must be made to the board of supervisors of the county for authority to take the necessary land and to construct the road described in the notice.

2780. *Special meeting of supervisors.*

SEC. 2780. On application therefor the president of the board of supervisors may call a special meeting to hear the application, ten days' notice thereof being served on each of the other supervisors, either personally or by leaving it at his place of residence, if absent; the expense of such special meeting and serving notices must be paid by the applicant.

2781. *Hearing the application.*

SEC. 2781. On the hearing, all residents of the county and others interested may appear and be heard. The board may take testimony, or authorize it to be taken by any officer of the county, and adjourn the hearing from time to time.

2782. *Action of supervisors.*

SEC. 2782. If it appears to the board of supervisors that the public interests will be promoted thereby, a majority of all the members thereof may grant the application, and by order authorize the company to take the real property necessary, and appoint two commissioners to lay out the road, who are disinterested either in the company or in any land sought to be taken or adjoining thereto. A copy of this order must be recorded in the county clerk's office before action under it is had.

2783. *Commissioners, how appointed for other counties and by corporation.*

SEC. 2783. If the route extends into more than one county the application must specify their names, and the board of supervisors of each of such counties must appoint commissioners to act in their respective counties with the commissioner and surveyor of the company. The company must appoint one commissioner of like qualification as those appointed by the board of supervisors, and furnish a surveyor to accompany and act with them.

2784. *Laying out the road.*

SEC. 2784. The commissioners must take the oath of office, and view and lay out the road as in their judgment will best promote the public interest. They must hear all persons interested, and may take testimony; they may determine the breadth of the way, not exceeding one hundred feet, except where the company acquire a greater breadth by grant. They must make, sign, and certify an accurate survey and description of the route and of the land necessary for the road, buildings, and gates in each county, and record the same in the office of the county clerk thereof. When the breadth of the road is not fixed by the commissioners it may be fixed by the commissioner of highways or the board of supervisors of the county.

2785. *Compensation of commissioners, map and report.*

SEC. 2785. The company must pay to each commissioner his expenses and four dollars a day for his services; cause their surveyor to make the map of the proposed road, which, when approved and certified by the commissioners, must be filed with the report in the office of the clerk of the board of supervisors and recorded.

2786. *Branches and extensions.*

SEC. 2786. The directors of any such company may, with the written consent of the holders of two thirds of the stock, proceed in the manner prescribed by the preceding seven sections to construct branches to their road, or to extend it or alter any part of its route or branches.

2787. *Acquiring lands by grant.*

SEC. 2787. Lands necessary for the purposes of the road or appurtenances may be acquired by purchase or condemnation. Lands within any highway may be granted by the board of supervisors or town or city authorities on such terms and for such sums as may be agreed upon.

2788. *Appropriation of damages for highways taken.*

SEC. 2788. When the road company desires the exclusive use of lands forming part of a highway, and such use is granted by the supervisors, the damages received therefor are to be paid to the road fund of the road district in which the same is situated.

2789. *Application, when unnecessary.*

SEC. 2789. When the company has obtained all the lands necessary in any county, by purchase or agreement, the road may be constructed without making the application to the board of supervisors hereinbefore provided for; but before proceeding to do so an accurate survey of such part of the road must be made by a practical surveyor, signed and sworn to by the president and secretary, and recorded in the county clerk's office; and if the road extends into another county, authority to construct the road there must be first obtained.

2790. *Orchards and gardens.*

SEC. 2790. No such road must be laid out through any orchard of four years growth, to the injury of the fruit trees, or any garden of four years cultivation, or any dwelling-house or building connected with a dwelling-house, or any yard or inclosure necessary thereto, without the consent of the owner.

2791. *Bridging streams.*

SEC. 2791. The road company may bridge any stream or river on the route of their road, when not within the limits prescribed by law for the erection and maintenance of any other bridge; and in bridging streams used for rafting lumber the bridge must be so constructed as not to prevent or endanger the passage of any raft forty feet in width.

2792. *One road corporation using the road-bed of another.*

SEC. 2792. No plank-road company must construct its road on the road of another company, except in case of crossings, without consent of the latter.

2793. *How to be constructed.*

SEC. 2793. Every such road must be laid out at least fifty feet wide. The track of plank roads must be constructed eighteen feet wide, of timber, plank or other hard material. The track of turnpikes must be bedded with stone, gravel or such other hard material found on the line thereof, to the width of eighteen feet, and faced with broken stone or gravel. The common wagon road must be graded at least twelve feet in width, and so constructed with necessary turnouts as to permit vehicles to pass each other conveniently. All the roads must be ditched on the sides when practicable, and have proper and necessary sewerage, and be so constructed that vehicles may pass on and off the track at all intersections of roads.

2794. *May relay with what.*

SEC. 2794. Every company that has once laid their road with plank may relay it or any part of it with broken stone, gravel, shells or other hard material whereby they keep a good, substantial road.

2795. *Milestones and posts.*

SEC. 2795. A milestone or post must be maintained at every mile, with an inscription showing the distance from the commencement of the road. If the road commences at the end of any other road, or intersects therewith, having milestones or posts on which the distance from any city or town is marked, a continuation of that distance must also be inscribed.

2796. *Guide-posts.*

SEC. 2796. A guide-post must be erected at every place where the road is intersected by a public road, with an inscription showing the name of the place to which such intersecting road leads, in the direction to which the name on the guide-post points.

2797. *Inspection, certificate, and completion.*

SEC. 2797. When the road, or three consecutive miles thereof, is completed, the commissioner of highways, or such road overseer or other person thereto specially appointed by the board of supervisors of the county, must inspect the road when requested, and if satisfied that the road conforms to the requirements of the law, must certify to the facts and file the certificate in the office of the county clerk; for such service four dollars per day must be by the company paid to the inspector or commissioner. When only three miles of any plank road are completed, if it is not the entire road, tolls must not be collected thereon for more than one year, unless the road or five consecutive miles are completed within the year.

2798. *Erection of gates, etc.*

SEC. 2798. When the certificate of completion is filed toll gates may be erected and tolls collected. No toll gate, toll house, or other building must be put up within ten rods of the front of any dwelling-house, barn or outhouse, without the written consent of the owner thereof.

2799. *Abandonment of road, and what becomes of it.*

SEC. 2799. Whenever the holders of two thirds of the stock consent, the directors of any company may abandon the whole or any part of their road at either or both ends, by written surrender thereof, attested by their seal, and acknowledged by the president and secretary as a deed or grant is acknowledged, and recorded in the clerk's office of each county where the surrendered road lies; thereafter the surrendered road belongs to the road districts in which it lies, but the company may continue to take toll on any three consecutive miles in length not so surrendered.

2800. *County may purchase road, how.*

SEC. 2800. At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chapter the county within which the road or any part thereof is located may purchase the same at a fair cash valuation, to be fixed by seven commissioners, all disinterested persons, three to be appointed by the board of supervisors of the county, three by the owner of the road, and the seventh by the county judge, who must estimate the fair cash value of the road and make report thereof under oath to the board of supervisors. If within three months after filing the report the appraised value thereof is tendered on behalf of the county to the owner of the road, or his authorized managing agent, in gold coin, the right of the owner to take tolls on the road is terminated, and the road becomes the property of the county.

2801. *How the appraisalment and award is made, and its effect.*

SEC. 2801. A majority of the board of commissioners mentioned in the preceding section constitute a quorum, and the concurrence of a majority in making the estimate and award is binding upon the road owner if approved by the board of supervisors. The commissioners must make their report within thirty days after their appointment, and if approved, the tender of the amount of the appraisalment and award must be made by the county treasurer; whether the owner conveys the road to the county or not, the report and tender operate as a conveyance to the county of the road and all its incidents and appurtenances.

ARTICLE II.

USE OF TOLL ROADS, AND OBSTRUCTIONS THEREON.

2814. *Persons exempt from tolls.*

SEC. 2814. The following persons, and none other, are exempt from payment of toll on wagon, turnpike, or plank roads:

1. Persons going to and from any funeral, and all funeral processions;
2. Troops in actual service of the state or of the United States, and persons going to or from a militia training which by law they are required to attend;
3. Persons going to or from the court-house in obedience to a subpoena in a criminal action;
4. Persons living within a mile of any gate by the most usually traveled road may pass it at one half toll, when not engaged in the transportation of others or the property of others;
5. Farmers living on their farms within one mile of any gate by the most usually traveled road may pass free when going to or from their work on such farms;
6. School children attending school within three miles of their parental or boarding houses.

2815. *Encroachments, how removed.*

SEC. 2815. On application by an officer of the company the commissioner of highways or road overseer of the district where the same exists, may inquire into any encroachment upon the lands of the company used for the purposes of the road, caused by fence, building, or otherwise, and he must, if he finds it does exist, require or cause its removal as provided for highway encroachments in Article VIII, Chapter II of this Title.

2816. *Who liable for penalty, and what.*

SEC. 2816. Every person who, having the control thereof, neglects to remove an encroachment after being notified thereof, or permits the same to remain after notice, unless he immediately commences and diligently prosecutes its removal to completion, is liable to a penalty of five dollars for every day of such neglect or failure.

2817. *Action for penalty or trespass.*

SEC. 2817. An action for the penalties given by this chapter, and for any trespass on or injury to such road may be maintained in the county where the act was done, or in that where the defendant resides, by the company.

ARTICLE III.

INSPECTION AND REPAIRS.

2827. *Inspection of roads, by whom, and how repairs to be made.*

SEC. 2827. Every commissioner of highways or road overseer of the district to whom complaint in writing is made that any part of a wagon, turnpike, or plank toll road in his county or district, or any part of such road, the gate nearest to which is in his county or district, is out of repair, must examine it without delay and give notice of the defect, particularly describing the same, to the person attending the gate nearest thereto; if the necessary repair is not made or defect remedied within three days after such notice is given the commissioner or road overseer may order such gate to be thrown open.

2828. *Closing gates, and penalty.*

SEC. 2828. A gate so ordered to be thrown open must not be shut nor any toll collected thereat until the commissioner of highways or road overseer

ordering it shut grants a certificate that the road is in sufficient repair, and that the gate ought to be closed. The company and their gatekeeper or other employee, violating or permitting the violation of this section, or the order made under the preceding section; are each liable in a penalty of twenty-five dollars for each offense, to be recovered by the party aggrieved.

2829. *Defects in road, to be reported to whom.*

SEC. 2829. Every commissioner of highways or road overseer who discovers a defect in any toll road in his county or district, or a gate placed in a situation contrary to law, must give written notice thereof to one or more of the directors or managing agents of the company, requiring the defective road to be repaired, or the gate to be removed, within a specified time; and may order that in the meantime such gates as he specifies be thrown open.

2830. *Enforcing obedience to notice and requirement.*

SEC. 2830. If the notice and requirements are not obeyed, the commissioner of highways or road overseer must make immediate complaint to the district attorney of the county, who must prosecute the company therefor in the name of the people for so suffering the road to be out of repair, or of having placed any gate in a situation contrary to the law; and if convicted thereof, the company must be fined not exceeding two hundred and fifty dollars.

2831. *Fees of commissioner or overseer, what, and how paid.*

SEC. 2831. The commissioner of highways or road overseer complaining to the district attorney, or who makes inspection and discovers defects in the road, is entitled to three dollars for each day's services in inspecting the road, or necessarily expended in prosecuting the action therefor, to be paid in case of conviction as costs. When no action is had, but repairs are made, or gate removed, on the inspection and requirement of the commissioner of highways or road overseer, the toll gatherer nearest the road so out of repair, or the gate to be moved, must pay the fees hereinbefore specified out of the tolls collected; if he refuse to pay the same, the same may be recovered by action, with costs.

2832. *Pack trails in mountain districts.*

SEC. 2832. The boards of supervisors of the several counties of this state are hereby authorized to permit the toll road companies heretofore or which may hereafter be organized under the provisions of this code, for the purpose of constructing toll roads within the mountain districts of this state, to first construct on the line of their proposed toll road a pack trail for the accommodation of pack trains and horsemen, and to collect tolls thereon; the board of supervisors shall fix the amount of license to be paid and tolls to be collected on such pack trail, and that no such permit or franchise shall be granted for a longer period than two years. [*New section, approved March 30, 1874; Amendments 1873-4, 131; took effect from passage.*]

CHAPTER IV.

PUBLIC FERRIES AND TOLL BRIDGES.

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ARTICLE I.

GENERAL PROVISIONS.

2843. *What board to grant authority to construct.*

SEC. 2843. When authority to construct a toll bridge or to erect and keep a

ferry over waters dividing two counties is desired, application must be made to the board of supervisors of that county situated on the left bank descending such bay, river, creek, slough, or arm of the sea.

2844. *Notice must be proved.*

SEC. 2844. The board of supervisors must not grant authority to construct or erect a toll bridge or ferry until the notice of such intended application has been given as respectively required in Articles II and III of this chapter.

2845. *Duty of the board of supervisors granting authority.*

SEC. 2845. The board of supervisors granting authority to construct a toll bridge or to keep a public ferry, must at the same time :

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the bridge or ferry for the benefit of the county and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof ;

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually ;

3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent. on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year ;

4. Make all necessary orders relative to the construction, erection, and business of licensed toll bridges or ferries which they have by law the power to make. The board of supervisors may, at any time they see fit, authorize and maintain fords across any water within any distance of any licensed toll bridge or ferry.

2846. *License tax and rate of tolls, how fixed.*

SEC. 2846. The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the board of supervisors must not exceed ten per cent. of the tolls annually collected.

2847. *Report of bridge or ferry owner or keeper.*

SEC. 2847. Every owner or keeper of a toll bridge or ferry must report annually to the board of supervisors from which his license is obtained, under oath, the following facts :

1. The actual cost of the construction or erection, and equipment of the toll bridge or ferry ;

2. The repairs made during the preceding year, and the actual cost thereof ;

3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business ;

4. The amount of tolls collected ; and,

5. The estimated actual cash value of the bridge or ferry, exclusive of the franchise.

2848. *Inquiry of board of supervisors fixing tolls.*

SEC. 2848. Whenever the board of supervisors are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the

same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county. When the estimate of the board is made, if the same is not agreed to by the owner or keeper of the bridge or ferry, the same must be fixed by three commissioners, one to be appointed by the board of supervisors, one by the owner and keeper, and the third by the county judge, who must hear testimony and fix such value and cost according to the facts, and report the same to the board of supervisors under oath. In all estimates of the fair cash value of the bridge or ferry the value of the franchise must not be taken into consideration.

2849. *When to direct license to issue.*

SEC. 2849. When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the board must on such ascertained amount fix the annual license tax rate of tolls, and the amount of the penal bond, and direct a license to be issued by the clerk.

An Act to enforce the collection of license taxes.

Approved March 21, 1872; 1871-2, 539.

Delinquent ferry and bridge license tax.

SECTION 1. Whenever any person who is required by law to pay a ferry or bridge license tax neglects to pay the same for the period of thirty days after the same is due or payable, the collector of such taxes must notify the district attorney thereof, who must at once institute proceedings against such person.

SEC. 2. This act shall be in force from and after its passage.

2850. *Bond, conditions and execution.*

SEC. 2850. The bond required of the owner or keeper of the toll bridge or ferry must be in the sum fixed by the board of supervisors, with one or more sureties, and conditioned that the toll bridge or ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the state and all legal orders of the board of supervisors regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such bridge or ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the president and filed with the clerk of the board of supervisors.

2851. *When bridge unites two counties.*

SEC. 2851. The license tax for a ferry or bridge connecting two counties must be paid to the treasurer of the county granting it, and the license issued by the auditor thereof; but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the bridge or ferry is located one half the sum so received annually, or the auditor may issue the license on filing with him receipts for their respective halves of the tax taken from the treasurer of each of the two counties.

2852. *When board divided, county judge to act.*

SEC. 2852. When a supervisor is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, the county judge of the county must act in his stead.

2853. *Toll bridge or ferry within one mile of another, when.*

SEC. 2853. No toll bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll bridge, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience.

In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll-bridge or ferry, as in this section provided, must be served upon the proprietor of the ferry or toll bridge already established at least ten days prior thereto, giving the time and place and grounds of such application.

2854. *Owner of land preferred to build bridge or ferry.*

SEC. 2854. The owner of land on either side of the waters to be crossed, and the owner of the land on the left bank descending over the owner of land on the right bank, is entitled to preference in procuring authority to construct a bridge or ferry; but where such owner fails or neglects to apply for such authority within a reasonable time after the necessity therefor arises, the board of supervisors may grant such authority to another.

2855. *How lands acquired for use of bridge or ferry.*

SEC. 2855. When there are lands necessary for the construction, erection, or use of such bridge or ferry which cannot be procured by agreement between the owner or corporation and the landowner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

2856. *Must post rates of toll.*

SEC. 2856. Every licensed toll bridge or ferry must have the rates of toll, as fixed by the board of supervisors, printed or written, posted up in some conspicuous place on or near the bridge or ferry.

2857. *Revenue derived from license, how disposed of.*

SEC. 2857. The proceeds of the license tax on ferries and toll bridges must be paid into the county treasury for the use of roads and highways, or may be used by the board of supervisors at any time in the purchase of toll roads and toll bridges.

2858. *To keep banks in repair.*

SEC. 2858. All ferry and toll bridge keepers must keep the banks of the streams or waters at the landings of their ferries or bridges graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county.

ARTICLE II.

TOLL BRIDGES.

2870. *Application for leave to construct.*

SEC. 2870. Every applicant for authority to construct a toll bridge must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therein, in an adjoining county, once in each week for six successive weeks, specifying the location, the length and breadth of the bridge, and the time at which the application hereinafter required will be made. After notice is given, application must be made to the board of supervisors of the proper county, at any meeting specified in the notice, for authority to construct it.

2871. *Hearing application.*

SEC. 2871. On the hearing, any person may appear and be heard. The board may take testimony or authorize it to be taken by any judicial officer of the county; and it may adjourn the hearing from time to time. A copy of the articles of incorporation, certified by the secretary of state, or by the clerk where they are filed, must be attached to and filed with the application if made by a corporation.

2872. *Action of board of supervisors.*

SEC. 2872. If the board are of opinion that the public interests will be promoted thereby, it may, by the assent of a majority of all the members of the board, grant the application by an order entered in its minutes, and particularly describing the bridge. The applicant must cause a certified copy of the order, with a copy of the application, to be recorded in the office of the clerk of the county before proceeding under it.

[The following act, though by its title supplemental to an act which has been superseded, is supposed to be in force:]

An Act supplemental to an act entitled "An Act supplementary to an act concerning public ferries and toll bridges, approved April 28, 1855," approved April 4, 1870.

Approved March 24, 1874; 1873-4, 581.

No bridges on certain rivers and streams.

SECTION 1. Boards of supervisors shall not have power to license bridges across the Sacramento or San Joaquin rivers, the Petaluma, Napa, or Sonoma creeks, except at points above the head of navigation on said streams.

SEC. 2. This act shall be in force from and after its passage.

2873. *What board of supervisors may require.*

SEC. 2873. The board of supervisors may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character, or description, and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued.

2874. *Use of highways.*

SEC. 2874. The corporation or bridge owner may use, in such manner as prescribed by the board, so much of any public road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll houses.

2875. *How constructed over navigable waters.*

SEC. 2875. All bridges constructed under this chapter crossing navigable streams must be so constructed as not to obstruct navigation, and must have a draw or swing of sufficient space or span to permit the safe, convenient, and expeditious passage at all times of any steamer, vessel, or raft which may navigate the stream or water bridged.

2876. *Supervisors may regulate weight, number, and attendance.*

SEC. 2876. The board of supervisors may, by order, regulate and govern the amount of weight and number of animals that may be driven on to a toll bridge at any one time, and prescribe rules for the government of the draws or swings and attendance of the same, and prescribe penalties for disobedience of such rules.

2877. *Channel of streams navigable by rafts to be kept clear.*

SEC. 2877. Any one bridging a stream navigated or navigable must at all times keep the channel above and below the bridge clear from all deposits occasioned by its erection and prejudicial to such navigation, and is liable to pay to all persons unreasonably hindered or delayed in passing such bridge with rafts or vessels all damages sustained thereby.

2878. *Completion of bridge, rate of toll, and license tax.*

SEC. 2878. Every bridge erected under these provisions must have good and substantial railings or sidings, at least four and a half feet high. When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the commissioner of highways or president of the

board of supervisors, and filed in the county clerk's office in the county or counties in which it is located, the directors or owner may erect a toll gate at such bridge and require such tolls as the boards of supervisors of the county or counties from time to time prescribe. A license therefor must be issued by the auditor of the county on giving the necessary bond and paying the license tax fixed therefor.

2879. *Persons exempt.*

SEC. 2879. Any person going to or from a funeral, school, performing highway labor, or attending a military parade, or court which by law he is required to attend as a witness in a criminal case, is exempt from the payment of tolls.

2880. *Penalty for avoiding tolls.*

SEC. 2880. Any person liable to pay toll, forcibly or fraudulently passing the gate of a toll bridge without paying the toll is liable to a penalty of ten dollars in addition to the damages caused, to be recovered by the owner.

2881. *County may purchase toll bridge.*

SEC. 2881. Within the same time, in like manner, and to the same effect as toll roads are purchased under the provisions of sections 2802 and 2803, the county or counties, jointly acting, in which the same is situated, may purchase a toll bridge constructed under the provisions of this chapter.

ARTICLE III.

TOLL FERRIES.

2892. *Application for leave to erect, and notice.*

SEC. 2892. Every applicant for authority to erect and take tolls on a public ferry must publish a notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, and by posting three notices in three public places in the township for four successive weeks, specifying the location and the time and place when and where the application will be made. After notice is given application must be made in writing, under oath, to the board of supervisors of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

2893. *Duty of board of supervisors.*

SEC. 2893. At the hearing, proof of giving the notice, as required by the preceding section, must be made, and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, and by reason of ownership of the landing or failure of the owner thereof to apply is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of twenty years.

2894. *Powers of board of supervisors.*

SEC. 2894. The board of supervisors may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character, and how propelled;
2. The number of hands, boatmen, or ferrymen to be employed, and rules for their government;
3. How many trips to be made daily;
4. When and under what circumstances to make trips in the night time;
5. Who may be ferried free of toll;
6. In what cases of danger or peril not to cross;

7. Penalties for violation of regulations;
8. In case of steamboats, the rate of speed;
9. The method of and preference in loading and crossing; and,
10. How and by whom action must be brought to recover penalties.

2895. *Penalties, how disposed of.*

SEC. 2895. Penalties recovered under this article must be paid to the county treasurer for the use of the general road fund of the county.

CHAPTER V.

WHARVES, CHUTES, AND PIERS.

2906. *Board of supervisors to authorize construction.*

SEC. 2906. The boards of supervisors of every county in this state may grant authority to any person or corporation to construct a wharf, chute, or pier, on any lands bordering on any navigable bay, lake, inlet, creek, slough, or arm of the sea, situate in or bounding their counties respectively, with a license to take tolls for the use of the same for the term of twenty years.

2907. *Application, what to contain and how made.*

SEC. 2907. Application therefor must be made by publishing notice as required in section 2892, and filing a petition in writing, containing:

1. The name and residence of the applicant; and if a corporation, a certified copy of the articles of incorporation;
2. A map of the waters, and the name and location thereof, and of the adjoining lands;
3. A plan of the wharf, chute, or pier proposed to be constructed, and of the land within three hundred feet thereof;
4. The names of the owners of the lands, and the quantity thereof sought to be used, and whether the right to use the same is or is to be acquired by the applicant;
5. The distance it is proposed to extend the wharf, chute, or pier into the waters;
6. The estimated cost of the construction of the wharf, chute, or pier; and,
7. The time when the application will be made.

2908. *What petition to contain, relative to lands not owned by applicant.*

SEC. 2908. When any lands are sought to be appropriated and used for a wharf, chute, or pier, of which the applicant is not the owner, or the right of way and use thereof has not been obtained by agreement, these facts and the particular description of such land must be set forth in the petition of the applicant, and a copy of the notice of application must be served on the owner thereof by the sheriff of the county, whose official return is conclusive evidence of service, at least ten days prior to the appointed day set for the hearing of the same.

2909. *Notice to be served on representatives of certain persons.*

SEC. 2909. When the owner of the land is a non-resident of the county it is service of notice for the sheriff to leave a copy with the occupant or agent of the owner; if none, then to place a copy in the post-office addressed to the owner thirty days prior to the day set for the hearing. If the owner is a minor, insane, idiot, or decedent, notice must be served on the guardian, administrator, or other legal representative of such person.

2910. *Board to hear proof, and may grant authority.*

SEC. 2910. On the day named in the notice, or to which the hearing is adjourned, the board of supervisors must hear proof of publication and service of

notice; if satisfactory, the board must hear the allegations of the petition and any objections to the granting of the application, and proofs in support of each. If from the proofs it appear that the public good or convenience will be promoted thereby, the board of supervisors may grant to the applicant the right to erect or construct a wharf, chute, or pier as prayed for, and to take tolls for the use of the same for the term of twenty years.

2911. *Overflowed or tide lands granted.*

SEC. 2911. The grant of authority made by the board of supervisors, as provided in the preceding section, conveys to the grantee or applicant the right of way and all necessary use for the purposes of the wharf, chute, or pier, of any of the overflowed, submerged, or tide lands belonging to the state, particularly describing the quantity thereof in the order, as also the right of way over any swamp, overflowed, marsh, or tide lands lying between the wharf, chute, or pier and high or dry land, fifty feet in width, for twenty years.

2912. *One hundred and fifty feet on each side of wharf, etc.*

SEC. 2912. The grant of authority herein provided for carries with it the right to have unincumbered and unobstructed the land and water on each side of the wharf, chute, or pier, from high water mark to navigable water, a distance of one hundred and fifty feet, for the convenience of landing, loading, and unloading vessels, but for no other purpose.

2913. *How to obtain use of lands.*

SEC. 2913. Authority to construct a wharf, chute, or pier being granted, the grantee or applicant may procure from the owner the right of way and other necessary incidental use for the wharf, chute, or pier, of any of his lands, by proceedings had under Title VII, Part III, of THE CODE OF CIVIL PROCEDURE. Until such use of the lands held adversely is obtained by agreement, or by the proceedings hereinbefore mentioned, there is no authority to construct a wharf, chute, or pier, or to take tolls thereon.

[The part of the Code of Civil Procedure referred to will be found, post, 11,237.]

2914. *Seventy-five feet in width.*

SEC. 2914. The wharf, chute, or pier must not be of a greater width than seventy-five feet, and may extend to navigable water, but not so far as in anywise to impede or obstruct the free navigation of the water on which the same is situated.

2915. *Franchise, what to constitute.*

SEC. 2915. The orders granting authority, and agreements, contracts, deeds, and decrees of courts granting the right of way and other use of lands, must be filed and recorded in the office of the recorder of the county where the wharf, chute, or pier is situate, and constitutes the franchise of the applicant. The fees of the recorder, as also the fees of the clerk, sheriff, and other officers, for services rendered, must be paid by the applicant.

2916. *Board of supervisors to fix rate of tolls, etc.*

SEC. 2916. The board of supervisors must fix the rate of tolls or wharfage for the use of the wharf, chute, or pier annually, which must not produce an income of less than fifteen per cent. per annum nor more than twenty-five per cent. per annum on the fair cash value of the wharf, chute, or pier, and on the cost of repair and maintenance thereof exclusive of the amount paid for license imposed by the next section. Such value and cost of repair and maintenance to be fixed by the board of supervisors when levying the rates of tolls or wharfage, by hearing evidence and examining the assessment rolls of the county. When fixed, the rates must be furnished the owner, and a printed or written

copy thereof conspicuously posted on the wharf, chute, or pier. [*Amendment, approved March 24, 1876; Amendments 1875-6, 52; took effect immediately.*^(a)]

2917. *License, and the tax for.*

SEC. 2917. When the wharf, chute, or pier is completed and the tolls or wharfage fixed, the owner is entitled to a license to take the tolls thereon for the term of one year, to be issued by the county auditor on the payment of such license tax as the board of supervisors may fix, which, except that for the first year, must not be more than ten per cent. of the gross receipts for tolls or wharfage for the previous year, to be paid to the county treasury for general road purposes.

2918. *To keep in good repair.*

SEC. 2918. Any owner or keeper of a wharf, chute, or pier who takes toll or wharfage for the use of the same when not in good repair, or is unsafe or dangerous, forfeits the sum of twenty-five dollars, to be recovered by order of the board of supervisors granting authority to construct it, for the use of the general road fund of the county, and is liable for all damages occasioned thereby.

2919. *Restrictions on granting authority.*

SEC. 2919. No authority must be granted under this chapter to interfere with vested rights, nor to interfere with or infringe grants heretofore made by state authority; nor does authority to construct a wharf, chute, or pier continue for a longer period than two years, unless the same is within that time completed.

2920. *Cities and towns incorporated exempted and authorized.*

SEC. 2920. The lands of the state situate in the city and county of San Francisco, and those otherwise disposed of or situate within the limits of any incorporated town or city of this state, are excluded from the provisions of this chapter. The municipal authorities of any incorporated city or town other than San Francisco may grant authority to construct wharves, chutes, and piers, as is herein provided for the board of supervisors.

CHAPTER VI.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC WAYS.

2931. *Laws of the highway.*

SEC. 2931. When vehicles meet, the drivers of each must turn seasonably to the right of the centre of the highway, so as to pass without interference, under a penalty of twenty-five dollars for every neglect, to be recovered by the party injured. Where the whole breadth of a roadway is not worked, the centre of the worked part is to be deemed the centre of the highway. In time of snow, where there is a beaten track, the centre of that is to be deemed the centre of the highway. But this section does not apply to vehicles meeting cars running on rails or grooved tracks.

2932. *Driver addicted to intorication.*

SEC. 2932. No person must employ to drive any vehicle for the conveyance of passengers upon any public highway a person addicted to drunkenness, under penalty of five dollars for every day such person is in his employment.

2933. *Notice to employer of driver's intoxication.*

SEC. 2933. If any driver, whilst actually employed in driving any such vehicle, is intoxicated to such a degree as to endanger the safety of his passengers, the owner, on receiving from any such passenger a written notice of

(a) The original section did not have the words "nor more than twenty-five per cent. per annum," nor the words "exclusive of the amount paid for license imposed by the next section," nor the words "and cost of repair and maintenance." Instead of "and on" it had the word "including."

the fact, verified by his oath, must forthwith discharge such driver; and if he has such driver in his service within six months after such notice he incurs a like penalty.

2934. *Horses to be fastened while standing.*

SEC. 2934. The driver of any vehicle used to convey passengers must not leave the horses attached thereto while passengers remain in the same without first securely fastening the horses or placing the lines in the hands of some other person, so as to prevent their running, under a penalty of twenty dollars for each offense.

2935. *Penalties, how and by whom recovered.*

SEC. 2935. The penalties provided by the three preceding sections are to be recovered by the district attorney of the county in which the offender resides, for the use of the county road fund. Any action for a penalty incurred under the last section must be commenced within six months.

2936. *Liability of owners for damages done by drivers.*

SEC. 2936. The owner of every vehicle running or traveling upon any road for the conveyance of passengers is liable for all damages to persons or property done by any person in his employment as a driver while driving such vehicle, whether done willfully or negligently, or otherwise, in the same manner as such driver would be liable.

2937. *Exceptions to preceding sections.*

SEC. 2937. Nothing contained in the six preceding sections must affect any law concerning hackney coaches or carriages in any city, nor affect laws or ordinances of any city for the licensing or regulating such coaches or carriages.

2938. *Protection of bridges.*

SEC. 2938. The owner of any toll bridge and any plank road company owning a bridge of not less than twenty feet span may put up conspicuously at each end of it notice in these words in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk;" and whoever rides or drives faster than a walk on such bridge forfeits to the owner the sum of five dollars.

TITLE VII.

General Police of the State.

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CHAPTER I.

IMMIGRATION.

2949. *Duties of masters of vessels arriving in California.*

SEC. 2949. Within twenty-four hours after the arrival of any vessel arriving at any of the ports of this state, bringing passengers from any place out of this state, the master of such vessel must make on oath to the commissioner of immigration at such port a written report.

2950. *Form of report.*

SEC. 2950. The report must state:

1. The name, place of birth, last residence, age, and occupation of all such passengers who are not citizens, or who shall have, within the last preceding twelve months, arrived from any country out of the United States, and who have not been examined, bonded, or paid commutation money, as provided in this chapter, or have been landed from any such vessel, at any place during her last voyage, or who have gone on board of any vessel with the intention of coming into this state, or who may have died during the last voyage of such vessel; and,

2. Whether any of the passengers so reported are lunatic, idiotic, deaf, dumb, blind, crippled, infirm, or are lepers, or persons affected with any of the diseases known as leprosy or elephantiasis;

3. The names and residences of the owners of such vessel. [*Amendment, approved March 25, 1876; Amendments 1875-6, 53; took effect immediately.*^(a)

(a) Original section:

SEC. 2950. The report must state:

1. The name, place of birth, last residence, age and occupation of all such passengers who are not citizens, or who shall have, within the last preceding twelve months, arrived from any country out of the United States, and who have not been bonded or paid commutation money, as provided in this chapter, as have been landed from any such vessel at any place during her last voyage, or who have gone on board of any vessel with the intention of coming into this state. 2. Whether any of the passengers so reported are lunatic,

idiotic, deaf, dumb, blind, crippled, or infirm, and not accompanied by any relatives able to support them. 3. Who may have died during the last voyage of such vessel; and 4. The name and residence of the owner of such vessel.

It was previously amended by act of March 30, 1874; Amendments 1873-4, 35, so as to make three subdivisions, by adding the words of the third to the end of the first as in the text, and by adding to the end of the second the words "or are lewd or abandoned women;" in other respects it was like the original.

2951. Oath to be administered to certain passengers.

SEC. 2951. The master or commander of the vessel must administer to any passenger of foreign birth, who declares himself a citizen of the United States, the following oath: "I, ———, do solemnly swear (or affirm) that I was born in ———; that I am a naturalized citizen of the United States; that I was naturalized and received my certificate of naturalization in the state of ———, in the year ———."

[Secs. 2952 and 2953, as originally adopted,^(a) were repealed by act approved March 30, 1874; Amendments 1873-4, 39, and a single new section substituted in their place. This substituted section was amended in 1876, as follows:]

2952. Lazarettos for lepers.

SEC. 2952. It shall not be lawful for lepers or persons affected with leprosy or elephantiasis to live in ordinary intercourse with the population of this state; but all such persons shall be compelled to inhabit such lazarettos or lepers' quarters as may be assigned to them by the board of supervisors of the city or county in which they shall be domiciled or settled; and the board of supervisors are vested with power and are required to make all necessary provisions for the separation, detention and care of lepers or persons affected with leprosy or elephantiasis settled or domiciled in their respective cities or counties. The superintendent or manager of all lepers' quarters under this chapter shall forward quarterly statements, showing the name, age, sex, and birthplace of each leper in such quarter to the secretary of state, who shall keep a proper record of such matters for the information of the public. [*Amendment, approved March 25, 1876; Amendments 1875-6, 53; took effect immediately.*^(b)]

2954. Nature of bond.

SEC. 2954. The bond required by the next preceding section must be a separate bond for each passenger, and the same sureties must not be upon more than one bond. Each bond must be secured by two or more sufficient sureties, residents of the state, each of whom must prove, before the commissioner of

(a) Repealed sections:

SEC. 2952. The commissioner of immigration, by an indorsement on the report, may require the owner or consignee of the vessel from which such passengers have been landed to give a joint and several bond to the people of the State of California, in a penalty of five hundred dollars, for each passenger included in such report, conditioned to indemnify and save harmless every county, town or city, in this state, against all costs and expenses which may be by them necessarily incurred for the relief, support or medical care of the persons named in the bond, within two years from the date of such bond.

SEC. 2953. Whenever there is among the passengers any lunatic, idiot, deaf, dumb, blind, cripple or infirm person not members of families, or who are likely to become permanently a public charge, or who have been paupers in any other country, or who from sickness or disease existing either at the time of sailing from the port of departure or at the time of their arrival in this state are a public charge, or likely soon to become so, the commissioner, in his indorsement, or by a subsequent indorsement (made at any time within twenty days after the landing of such passenger), must require, in addition to the bond provided for by the preceding section, that the owner or consignee of such vessel execute for every such passenger a further bond, joint and several, to the people of this state in the sum of one thousand dollars, conditioned and secured in the same manner as the bond in the preceding section.

(b) Original substituted section:

SEC. 2952. The commissioner of immigration, to satisfy himself whether or not any passenger who shall arrive in this state by vessels from any foreign port or place (who is not a citizen of the United States), is lunatic, idiotic, deaf, dumb, blind, crippled or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become permanently a public charge, or has been a pauper in any other country, or is, from sickness or disease existing either at the time of sailing from the port of departure or at the time of his arrival in this state, a public

charge, or likely soon to become so, or is a convicted criminal, or a lewd or debauched woman, no person who shall belong to either class, or who possesses any of the infirmities or vices specified herein, shall be permitted to land in this state, unless the master, owner or consignee of said vessel shall give a joint and several bond to the people of the State of California, in the penal sum of five hundred dollars in gold coin of the United States, conditioned to indemnify and save harmless every county, city and county, town and city of this state against all costs and expenses which may be by them necessarily incurred for the relief, support, medical care, or any expense whatever, resulting from the infirmities or vices herein referred to, of the persons named in said bonds, within two years from the date of said bonds; and the commissioner of immigration shall receive from the master, owner or consignee of every vessel which shall bring any passengers (who are of foreign birth and not naturalized) from any foreign port or place, the sum of seventy cents for every passenger examined by him as aforesaid, which said sum shall be appropriated by said commissioner as fees and compensation for said services; and if such sum shall not be paid within three days after the arrival of said vessel, the commissioner may bring suit at law to recover the same against the master, owner, consignee and vessel, or either of them, jointly or severally, for the recovery of said sum, and every judgment thus obtained against said parties shall be a lien upon said vessel; and if the master, owner or consignee of said vessel shall fail or refuse to execute the bond herein required to be executed, they are required to retain such person on board of said vessel until said vessel shall leave the port, and then convey said passengers from this state; and if said master, owner, or consignee shall fail or refuse to perform the duty and service last herein enjoined, or shall permit said passengers to escape from said vessel and land in this state, they shall forfeit to the state the sum of five hundred dollars in gold coin of the United States for each passenger so escaped, to be recovered by suit at law.

immigration, by oath or otherwise, indorsed in writing on such bond, that he is a freeholder and resident of the state, and is worth double the amount of the penalty of the bond in real estate, over and above all his debts and liabilities. The bond may, at the option of the party, be secured by mortgage on real estate, or by the pledge and transfer of United States bonds, or controller's warrants of this state, in any amount sufficient to secure the same. [*Amendment, approved March 30, 1874; Amendments 1873-4, 41; took effect immediately.*]^(a)

[Sec. 2955, as originally adopted,^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 41; took effect immediately; but it was re-enacted and amended in 1876, as follows:]

2955. Examination and disposition of lepers—Fees.

SEC. 2955. The commissioner of immigration must satisfy himself whether or not any person who shall arrive in this state, by vessel from any foreign port or place, is a leper, or affected with the disease known as leprosy or elephantiasis, before such person shall mingle with the population of this state. For the purpose of ascertaining said fact the commissioner is vested with the power and authority to detain all such persons on board any such vessel so arriving, and to assign the vessel to a berth or anchorage separate and apart from other vessels, and at a safe and suitable distance from the shore, if in his judgment it shall be necessary, until such fact can be fully ascertained by him. Such fact shall be ascertained by personal inspection and examination of each and every person on board such vessel; and the commissioner of immigration is authorized, empowered, and required to make such personal inspection and examination of all persons so arriving by any such vessel, the same to be made at such berth or anchorage as he shall, in his discretion, assign to such vessel for that purpose, and shall be made before the landing of any person thereupon. All of such persons who, upon inspection and examination, are found to be lepers, or affected with the disease known as leprosy or elephantiasis, shall be taken in charge by the commissioner of immigration, and placed in a suitable lazaretto, or lepers' quarter, to be provided or designated by the board of supervisors, whenever necessary for that purpose, as hereinbefore prescribed, and there detained and properly cared for, separate and apart from the general population of this state, so long as they, the said lepers, shall elect to remain in the State of California, or until they shall have recovered from said disease, and no longer. All of such persons as shall be found to be free from said disease shall be allowed to depart and go at their will, without unnecessary detention or delay, and shall be entitled to receive a certificate of the fact of their freedom from said disease from said commissioner. For his services in making such examination and inspection the commissioner of immigration shall demand and collect from the master, owner, or consignee of such vessel the sum of seventy cents in U. S. gold or silver coin, for each and every person so examined or inspected, which sum, except four thousand dollars a year and expenses of office, shall, when required for such purpose, be paid by the commissioner into the state treasury, to be used in the maintenance, when necessary, of such lazarettos or lepers' quarters as shall be constructed under this law. Any master, owner, or consignee of any vessel arriving at any port of this state who shall fail or refuse to perform, or permit the performance of any of the acts or

(a) The original section had the words "either of the two next preceding sections," instead of "the next preceding section."

(b) Repealed section:

SEC. 2955. Within three days after the landing of each passenger from any vessel the master or commander, the owner or consignee of the vessel, may commute for the bonds required by this chapter by paying to the commissioner the sum of five dollars for

every passenger reported. Upon the payment of such commutation money and filing with the controller of state the receipt of the commissioner therefor by the party paying the same, such party shall not be required to give bonds. The controller of state must file such receipts in his office, and compare the same with the accounts of the several commissioners of immigration, when rendered monthly.

things required by this chapter, or to take and occupy with his vessel the berth or anchorage assigned for the same by the commissioner, pending the examination and inspection herein provided for, or who shall permit or allow any person arriving in such vessel to depart therefrom, and to communicate, mingle, or associate with the population of this state, or any part thereof, until after such examination and inspection by the commissioner is had, shall for every such act or omission forfeit to the commissioner of immigration the sum of one thousand dollars in U. S. gold coin, to be sued for and recovered by suit in any court of competent jurisdiction, and to be applied in like manner with the fees. And any master, owner, or consignee of any such vessel so arriving, who shall refuse or neglect to pay or cause to be paid to said commissioner the fee of seventy cents for the examination and inspection of each and every person so arriving in such vessel, shall forfeit to said commissioner for each case the sum of five hundred dollars in U. S. gold coin, to be recovered and applied as above. And the commissioner shall have a lien upon the vessel, and the same shall be sold to pay any judgment recovered under this act. The commissioner shall have the power to call in the aid of the sheriff and all police authorities to assist in enforcing this law. And he may appoint one or more deputies under him, who shall be invested with all the powers of the commissioner, and may discharge his official duties when required by him. The commissioner of immigration must prepare and transmit to the secretary of state, quarterly statements, certified under his hand and seal, showing the name, age, sex, birthplace, and present residence of every leper or person affected with leprosy or elephantiasis, examined or inspected by him, as well as any other information or fact touching the character and prevalence of said disease within his knowledge. [*Re-enactment and amendment, approved March 25, 1876; Amendments 1875-6, 53; took effect immediately.*]

2956. *Action on bond.*

SEC. 2956. If any person for whom a bond has been given under this chapter within the time specified in such bond, becomes chargeable upon any city, town, or county of this state, an action may be brought upon such bond in the name of the people of this state, by the district attorney of the county. The plaintiff in the action is entitled to recover upon such bond, from time to time, so much money, not in the whole exceeding the penalty of such bond, exclusive of costs, as may be sufficient to defray the expense incurred by any such city, town, or county, for the maintenance and support of the person for whom the bond may have been given. The amount of such recovery may be collected from the sale of the real estate or other security mortgaged, pledged, or deposited therefor, in conformity with this chapter.

2957. *Penalty for neglect to give bond.*

SEC. 2957. If any person or consignee neglects or refuses to give any of the bonds required by this chapter within three days after the landing of such passenger, or the indorsement of the commissioner, or does not within that time make the commutation authorized by section 2955, he is liable to the State of California in the penal sum of one thousand dollars for each passenger on whose account such bond may have been required, or for whom such commutation might have been made under this chapter.

2958. *Commutation fund, where to be placed.*

SEC. 2958. All moneys received in commutation of bonds, and paid into the state treasury, must be placed to the credit of the general fund. [*Amendment, approved March 7, 1874; Amendments 1873-4, 132; took effect immediately.*^(a)]

(a) The original section after "must be" had the following words, "appropriated for the support and maintenance of the indigent sick."

2959. *Fines and penalties, lien on vessel.*

SEC. 2959. For all fines and penalties imposed by this chapter upon any master or commander, owner or consignee, for any omission, neglect, or refusal to perform any act or duty required by this chapter, such vessel is liable; and the amount of such fines or penalties are a lien upon such vessel, and have priority over all other liens, except those for seamen's wages, bottomry bonds, and respondentia. Such penalties and fines may be sued for and recovered in a civil action, with costs of suit, by the commissioner, or by his authorized attorney, in the name of the people of the State of California, in any court having cognizance thereof, and when recovered must, after deducting the expenses, be paid into the state treasury.

2960. *Other commutations.*

SEC. 2960. The commissioner may compound or commute, for any of the penalties or fines, upon such terms as he thinks proper, and at the end of every month report to the controller of state the reasons and causes of such compounding or commutation. He may also compound or commute with the owner or consignee of any vessel, for any bond required to be given by such owner or consignee for such passengers as have been paupers in any other country, or who, from their condition at the time of their arrival in this state, or from sickness or disease at the time of their leaving the port of departure, are a public charge, or likely soon to become so; such commutation to be fixed by the commissioner at such sum as he may deem sufficient to defray the necessary expenses of such persons during the continuance of their then sick, disabled, or infirm state.

2961. *Commutation money to be paid into state treasury.*

SEC. 2961. The commissioner receiving any commutation money, or any moneys from fines or penalties, under this chapter, must account for and pay the same, less twenty per cent., which he may retain as his compensation, on the first Tuesday of every month, to the treasurer of state, in the same manner in which county treasurers account. He must specify in his account the names of the parties paying each sum of money, the date of such payment, for what paid, or the name of the vessel and the number of passengers on account of whom it was paid, or annex thereto an affidavit of its correctness. The commissioner must also furnish to the parties paying any commutation money, or any money from other sources, receipts in duplicate, specifying the amount paid, the name of the vessel and the number of passengers on account of whom or for what it was paid. [*Amendment, approved March 30, 1874; Amendments 1873-4, 41; took effect immediately.*^(a)]

2962. *Certain vessels exempted.*

SEC. 2962. Masters of vessels arriving at any of the ports of this state from any port in this state, or from Oregon, or Washington territory, are exempt from making the statement required by this chapter when the vessels in which they arrive have not taken on board at their port of departure, or at any intermediate port, any alien passenger, to be landed at the port of arrival; and masters of vessels arriving from Panama are also exempted from the provisions of this chapter when they have not landed, or are not about to land, passengers who took their departure from ports other than the port of New York; and in no case must such master be required to report any passenger other than way passengers taken on board between the port of New York and the port of arrival in this state.

2963. *Certain persons exempted.*

SEC. 2963. The consuls, ministers, agents or other public functionaries of any

(a) The original section after the words "fines or penalties," had the words "or other sources."

foreign government, arriving in this state in their official capacity, are exempt from the provisions of this chapter.

2964. Powers and duties of commissioners of immigration.

SEC. 2964. The commissioner of immigration must approve all bonds and administer all oaths required in the discharge of his duties. Whenever it appears that the master or commander of any vessel has not made a full and correct report, as provided by this chapter, the commissioner must inquire into the same, and for that purpose may require the attendance of witnesses before him in the same manner as notaries public may in civil cases. Testimony so taken may be read as evidence on the trial of any action commenced for any penalty or forfeiture accruing under the provisions of this chapter in the same manner and with the like effect as if regularly taken in such action.

2965. Same and fees.

SEC. 2965. The commissioner of immigration must prepare all bonds required to be given by the owners or consignees, masters, captains, or commanders of vessels, and administer the oaths to the sureties upon such bonds, and for each bond he may charge and collect a fee of three dollars, and for the administration of each oath he may charge one dollar; and if he neglects to administer the oath to such sureties, or to require them to justify on each bond, as required herein, or if he demands or receives any other or larger fees, commissions, or compensation for services than is expressly allowed in this chapter, he shall pay to the State of California the penal sum of one hundred dollars for each offense.

2966. Ex officio commissioners.

SEC. 2966. In all ports in this state, other than San Francisco, the mayor or chief municipal officer at such port, or if there be none such, then the sheriff of that county is ex officio commissioner of immigration for such port, and in carrying out the provisions of this chapter, and has all the powers and is liable to all the penalties provided herein.

2967. [SEC. 2967^(a) was repealed by act, approved March 30, 1874; Amendments 1873-4, 42; took effect immediately.]

2968. Bond of commissioner.

SEC. 2968. The commissioner of immigration for the port of San Francisco must execute an official bond in the sum of twenty-five hundred dollars. [Amendment, approved March 25, 1876; Amendments 1875-6, 53; took effect immediately.^(b)

CHAPTER II.

PRESERVATION OF PUBLIC HEALTH.

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^(a) Repealed section:

SEC. 2967. The district attorney of any county in which the provisions of this chapter may be violated must collect and enforce the payment of all penalties to the state incurred hereunder. One fourth of the money so collected must be retained by him as com-

pensation for his services, and the other three fourths must be paid into the county treasury of the county, to be paid into the state treasury for state purposes.

^(b) The original section instead of "hundred," had the word "thousand."

ARTICLE I.

STATE BOARD OF HEALTH.

2978. *Who constitutes the state board.*

SEC. 2978. The state board of health consists of seven physicians—two of the city of Sacramento, and five from other portions of the state—appointed by the governor for the term of four years.

2979. *Duties.*

SEC. 2979. The state board of health must place themselves in communication with the local boards of health, hospitals, asylums, and public institutions throughout the state, and take cognizance of the interests of health and life among the citizens generally. They must make sanitary investigations and inquiries respecting the causes of disease, especially of epidemics, the source of mortality, and the effects of localities, employments, conditions, and circumstances on the public health, and gather such information in respect to these matters as they may deem proper for diffusion among the people. They may devise some scheme whereby medical and vital statistics of sanitary value can be obtained, and act as an advisory board to the state in all hygienic and medical matters, especially such as relate to the location, construction, sewerage, and administration of prisons, hospitals, asylums, and other public institutions. They must, at each biennial session of the legislature, make a report, with such suggestions as to legislative action as they deem proper.

2980. *To report as to the effect of intoxicating liquors.*

SEC. 2980. The board must examine into and report what, in their best judgment, is the effect of the use of intoxicating liquor as a beverage upon the industry, prosperity, happiness, health and lives of the citizens of the state; also, what legislation, if any, is necessary in the premises.

2981. *Time and place of meeting—President and secretary.*

SEC. 2981. The board must meet at the capital of the state, at least once in every three months. They must elect from their own number a president and a permanent secretary; the latter must reside at the capital, and is their executive officer. No member, except the secretary, receives any compensation; but the actual traveling expenses of the members, while engaged in the duties of the board, are allowed, and paid out of the general fund.

2982. *Duties of secretary, and salary.*

SEC. 2982. The secretary must superintend the work and perform such other duties as the board may require. He must furnish the legislature, when in session, such information cognate to this chapter as, from time to time, may be necessary. An annual salary of twenty-five hundred dollars, and his office and other necessary expenses incurred in the performance of his duties, must be paid to him in the same manner as salaries of state officers are paid.

2983. *Expenses of, limited.*

SEC. 2983. The expenses of the board, including the salary of the secretary, must not exceed four thousand dollars per annum.

ARTICLE II.

VACCINE AGENT.

2993. *Agent to obtain genuine vaccine matter.*

SEC. 2993. The vaccine agent must obtain a supply of the genuine vaccine matter, and preserve the same for the use and benefit of the citizens of this state.

2994. *Compensation and duty of.*

SEC. 2994. Such agent must furnish genuine vaccine matter, approved by the state board of health, to any regular practicing physician in good standing in his profession in this state. He may charge and receive for every parcel of vaccine matter furnished the sum of five dollars, which is in full compensation for his services and expenses.

ARTICLE III.

HEALTH AND QUARANTINE REGULATIONS FOR THE CITY AND HARBOR OF SAN FRANCISCO.

3004. *Quarantine grounds, location of.*

SEC. 3004. The quarantine grounds of the bay and harbor of San Francisco are at the anchorage of Saucelito.

3005. *Board of health of San Francisco, how constituted.*

SEC. 3005. The board of health of the city and county of San Francisco consists of the mayor of the city and county, and four physicians in good standing residing in the city and county of San Francisco, appointed by the governor, and holding their offices for the term of five years.

3006. *Mayor ex officio president—Time of meeting.*

SEC. 3006. The mayor is ex officio president of the board. The board must meet monthly, and at such other times as the president may direct. In the absence of the president, the board may elect a chairman, who is clothed with the same powers as the president.

3007. *Health officer—His election.*

SEC. 3007. The health officer for the city and county and port of San Francisco is elected by the board of health, and holds office at its pleasure. He must be a graduate of some medical college, in good standing, and must reside within the city limits of San Francisco.

3008. *Powers.*

SEC. 3008. The health officer may perform all acts which quarantine officers are usually authorized to perform, and he is the executive officer of the board of health.

3009. *Deputy health officer, etc., to be appointed.*

SEC. 3009. The board of health must appoint a deputy health officer, who shall be a physician in good standing; a secretary, two health inspectors, one market inspector, and one messenger, whose duties must be fixed by the health officer. They must also appoint one resident physician, one assistant resident physician, one steward, one matron, one first apothecary, one second apothecary, two visiting physicians, two visiting surgeons, as officers of the city and county hospital, in and for the city and county of San Francisco. One each of said visiting physicians and surgeons to be nominated by the faculty of the medical department of the university of California, and one each of said visiting physicians and surgeons to be nominated by the medical college of the Pacific. The said board shall also have the power to appoint one superintendent, one resident physician, one matron, and such other employees as are now authorized by law to be employed in and for the almshouse in said city and county. The appointing power aforesaid is vested solely in said board of health, and said board shall have power to prescribe the duties of said appointees and to remove the same at pleasure. [*Amendment, approved March 23, 1874; Amendments 1873-4, 132; took effect from passage; repealed conflicting acts.*^(a)]

[See also amendatory act under next section.]

(a) The original section consisted of the first sentence alone.

3010. *Compensation of health officers.*

SEC. 3010. The following annual salaries are hereby allowed to the officers of the health department and such other officers as are mentioned in section one of this act, viz.: health officer, twenty-four hundred dollars; deputy health officer, eighteen hundred dollars; secretary, two thousand and one hundred dollars; health inspectors, one thousand and two hundred dollars each; market inspector, one thousand and two hundred dollars; messenger, nine hundred dollars. All of said salaries must be paid in equal monthly installments, out of the general fund of the city and county of San Francisco, in the same manner as the salaries of the other officers of the said city and county are paid. There shall be paid to the officers and employees of the city and county hospital, and almshouse, the following annual salaries, viz.: resident physicians, two thousand and four hundred dollars; assistant resident physicians, fifteen hundred dollars; steward, fifteen hundred dollars; matron, seven hundred and twenty dollars; first apothecary, twelve hundred; second apothecary, six hundred; visiting physicians and surgeons, twelve hundred dollars each; superintendent of almshouse, eighteen hundred dollars; resident physician of almshouse, fifteen hundred dollars; matron of the almshouse, six hundred dollars; and all other employees of said institutions are to be paid such sums as are now authorized by law, all to be paid in equal monthly installments out of the hospital and almshouse fund of said city and county of San Francisco. And the auditor of said city and county is hereby directed to audit the said demands, payable out of the funds aforesaid, upon the approval of the same by the said board of health, and also to audit all demands for salaries of medical attendants and employees, appointed by the board of health in accordance with this chapter, for the amounts authorized by law to be paid when the same shall have been approved by said board. [*Amendment, approved March 23, 1874; Amendments 1873-4, 133; took effect from passage; repealed conflicting acts.*^(a)

[The "section one of this act," mentioned in the foregoing amendment, refers to the amendment of the preceding section 3009. Both sections were further amended by the following act:]

An Act to amend an act entitled "An Act to amend sections 3009 and 3010 of the Political Code," approved March 23, 1874.

Approved March 30, 1874; Amendments 1873-4, 135.

Appointment of city physician.

SECTION 1. The board of health of the city and county of San Francisco shall alone have the power to appoint one city physician, who shall receive an annual salary of nine hundred dollars, which must be paid, in equal monthly installments, out of the general fund of the city and county of San Francisco, in the same manner as the salaries of the other officers of said city and county are paid.

Appointment of employees.

SEC. 2. The said board of health of the city and county of San Francisco may, in their discretion, appoint one engineer and plumber, one first cook, second cook, one third cook, one baker, one butcher, one clerk and interpreter, one ambulance driver, one gatekeeper, one dresser and sixteen nurses, as employees and medical attendants of the city and county hospital of San Francisco.

Salaries.

SEC. 3. The following monthly salaries are hereby allowed to said employees and medical attendants mentioned in section 2 of this act: Engineer and plumber,

(a) The original section provided for the same compensation to be paid to the officers mentioned in the first two sentences, down to and including the words "of the said city and county are paid."

\$100 per month; first cook, \$70 per month; second cook, \$40 per month; third cook, \$35 per month; baker, \$75 per month; butcher, \$40 per month; clerk and interpreter, \$40 per month; ambulance driver, \$40 per month; dresser, \$50 per month; nurses, \$40 per month each. All of said sums must be paid monthly out of the hospital and almshouse fund of said city and county of San Francisco, and the auditor of said city and county is hereby directed to audit the said demands payable out of the fund aforesaid, upon the approval of the same by the said board of health.

SEC. 4. This act shall take effect and be in force from and after its passage.

3011. *Expenses of health officer.*

SEC. 3011. The health officer, in addition to his salary, receives such sums for the necessary expenses of his office as the board of health may direct, and the auditor must audit and the treasurer pay such sums out of the general fund. The board of supervisors must provide proper offices for the health department.

3012. *General powers of board of health.*

SEC. 3012. The board of health have general supervision of all matters appertaining to the sanitary condition of the city and county, including the city and county hospital, the county jail, almshouse, industrial school, and all public health institutions provided by the city and county of San Francisco; and may adopt such orders and regulations, and appoint or discharge such medical attendants and employees, as to them seems best to promote the public welfare; and may appoint as many health inspectors as they deem necessary in time of epidemics.

3013. *Shipmasters to report infected vessels.*

SEC. 3013. Shipmasters bringing vessels into the harbor of San Francisco, and masters, owners, or consignees having vessels in the harbor which have on board any cases of Asiatic cholera, smallpox, yellow, typhus, or ship fever, must report the same, in writing, to the health officer before landing any passengers, casting anchor, or coming to any wharf, or as soon thereafter as they, or either of them, become aware of the existence of either of these diseases on board of their vessel.

3014. *Passengers and freight not to be landed without permit.*

SEC. 3014. No captain or other officer in command of any vessel sailing under a register arriving at the port of San Francisco, nor any owner, consignee, agent, or other person having charge of such vessel, must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land or permit to be landed any freight, passengers, or other persons from such vessel until he has reported to the health officer, presented his bill of health, and received a permit from that officer to land freight, passengers, or other persons.

3015. *Duties of pilots.*

SEC. 3015. Every pilot who conducts into the port of San Francisco any vessel subject to quarantine or examination by the health officer, must:

1. Bring the vessel no nearer the city than is allowed by law;
2. Prevent any person from leaving and any communication being made with the vessel under his charge until the health officer has boarded her and given the necessary orders and directions;
3. Be vigilant in preventing any violation of the quarantine laws, and report without delay all such violations that come to his knowledge to the health officer;
4. Present the master of the vessel with a printed copy of the quarantine laws, unless he has one;
5. If the vessel is subject to quarantine by reason of infection, place at the mast-head a small yellow flag.

3016. *Penalty for neglect of masters of vessels to comply with sanitary regulations.*

SEC. 3016. Every master of a vessel, subject to quarantine or visitation by the health officer, arriving in the port of San Francisco, who refuses or neglects either:

1. To proceed with and anchor his vessel at the place assigned for quarantine, when legally directed so to do; or,

2. To submit his vessel, cargo, and passengers to the health officer, and furnish all necessary information to enable that officer to determine what quarantine or other regulations they ought, respectively, to be subject; or,

3. To report all cases of disease, and of deaths occurring on his vessel, and to comply with all the sanitary regulations of the bay and harbor;

—Is liable in the sum of five hundred dollars for every such neglect or refusal.

3017. *Vessels from infected ports, etc., subject to quarantine.*

SEC. 3017. All vessels arriving off the port of San Francisco from ports which have been legally declared infected ports, and all vessels arriving from ports where there is prevailing, at the time of their departure, any contagious, infectious, or pestilential diseases, or vessels with decaying cargoes, or which have unusually foul or offensive holds, are subject to quarantine, and must be by the master, owner, pilot, or consignee reported to the health officer without delay. No such vessel must cross a right line drawn from Meiggs wharf to Alcatraz island until the health officer has boarded her and given the order required by law.

3018. *Examination and inspection of vessels by health officer.*

SEC. 3018. The health officer must board every vessel subject to quarantine or visitation by him, immediately on her arrival, make such examination and inspection of vessel, books, papers, or cargo, or of persons on board, under oath, as he may judge expedient, and determine whether the vessel should be ordered to quarantine, and if so, the period of quarantine.

3019. *Passengers not to be landed without permit.*

SEC. 3019. No captain or other officer in command of any passenger-carrying vessel of more than one hundred and fifty tons burden, nor of any vessel of more than one hundred and fifty tons burden having passengers on board, nor any owner, consignee, agent, or other person having charge of such vessel or vessels, must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land, or permit to be landed, any passenger from the vessel until he has presented his bill of health to the health officer, and received a permit from that officer to land such passenger, except in such cases as the health officer deems it safe to give the permit before seeing the bill of health.

3020. *Fees of health officer.*

SEC. 3020. The following fees may be collected by the health officer: For giving a permit to land freight or passengers, or both, from any vessel of less than one thousand tons burden, from any port out of this state, two and a half dollars; from any port in this state, one dollar and a quarter; from any passenger-carrying vessel of more than one thousand tons burden, three dollars and seventy-five cents; for vessels of more than one thousand tons burden, carrying no passengers, two dollars and fifty cents; for vaccination, from each person, one dollar.

3021. *Compulsory vaccination.*

SEC. 3021. The board of health may enforce compulsory vaccination on passengers in infected ships or coming from infected ports.

3022. Hospitals to be provided.

SEC. 3022. The board of health may provide suitable hospitals, to be situated at or near Saucelito, and furnish and supply the same with nurses and attaches, and remove thereto all persons afflicted with cholera, smallpox, yellow, typhus, or ship fever.

3023. Records of births, deaths, and interments to be kept.

SEC. 3023. The health officer must keep a record of all births, deaths, and interments occurring in the city and county of San Francisco. Such records, when filled, must be deposited in the office of the county recorder, and produced when required for public inspection.

3024. Returns of births, deaths, and number of stillborn children.

SEC. 3024. Physicians and midwives must, on or before the fourth day of each month, make a return to the health officer of all births, deaths, and the number of stillborn children occurring in their practice during the preceding month. In the absence of such attendants, the parent must make such report within thirty days after the birth of the child. Such returns must be made in accordance with rules adopted and upon blanks furnished by the board of health.

3025. No bodies to be interred without permit.

SEC. 3025. No person must inter in the city and county of San Francisco any human body without having first obtained a physician's or coroner's certificate, setting forth as near as possible the name, age, color, sex, place of birth, date, locality, and cause of death of the deceased; and physicians, when deaths occur in their practice, must give such certificates.

3026. Return of interments to be made to health officer.

SEC. 3026. Superintendents of cemeteries within the boundaries of the city and county of San Francisco must return to the health officer on each Monday the names of all persons interred within their respective cemeteries for the preceding week, together with the certificates mentioned in the preceding section.

3027. Bodies not to be removed without permit.

SEC. 3027. No superintendent of a cemetery can remove, or cause to be removed, disinter, or cause to be disinterred, any corpse that has been deposited in the cemetery, without a permit from the health officer, or by order of the coroner.

3028. Nuisances on premises of non-residents, how abated.

SEC. 3028. Whenever a nuisance exists on property of any non-resident of the city and county, the board of supervisors may, on the recommendation of the board of health, cause the nuisance to be abated, and may allow and order paid out of the general fund all proper charges and expenses incurred in abating such nuisance; and all sums so allowed and paid become a charge upon the property on which the nuisance existed, and may be recovered by an action against such property.

3029. Health officer to keep fee book.

SEC. 3029. The health officer must keep in his office a book in which he must make an entry of all fees collected by him. He must pay all fees collected to the city and county treasurer weekly, to the credit of the general fund.

3030. Bond of health officer.

SEC. 3030. The health officer must execute an official bond, to be approved by the board of health, in the sum of ten thousand dollars.

3031. Health officer may administer oaths.

SEC. 3031. Any member of the board of health, deputy health officer, or sec-

retary of the health department, is empowered to administer oaths on business connected with that department.

3032. *Actions, in whose name maintained.*

SEC. 3032. Whenever any cause of action arises under any of the provisions of this chapter, suit may be maintained therein, in the name of the health officer, in any district court of this state.

An Act to establish a quarantine for the bay and harbor of San Francisco, and sanitary laws for the city and county of San Francisco.

Approved April 4, 1870; 1869-70, 716.

Quarantine grounds at Saucelito.

SECTION 1. The quarantine grounds of the bay and harbor of San Francisco shall be at the anchorage of Saucelito.

Board of health.

SEC. 2. There shall be a board of health in and for the city and county of San Francisco, which board shall consist of the mayor of the city and county, and four physicians in good standing, residing in the city and county of San Francisco, who shall be appointed by the governor; and they shall determine by lot, one shall hold for one year, one for two years, one for three years, one for four years; and their successors shall be appointed, as herein provided, for the term of five years each.

Meetings.

SEC. 3. The mayor of the city and county of San Francisco shall be ex officio president of the board of health; they shall meet monthly and at such other times as the president may call them together for the transaction of business. In the absence of the president the board shall elect a chairman, who shall be clothed with the same powers as the president.

Health officer.

SEC. 4. There shall be a health officer for the city and county and port of San Francisco; he shall be elected by the board of health, and shall continue in office during its pleasure. He shall be a graduate of some medical college in good standing, and shall reside within the city limits of San Francisco.

Powers of health officer.

SEC. 5. The health officer shall have power to perform all acts which quarantine officers are usually authorized to perform, and shall be the executive officer of the board of health.

Officers.

SEC. 6. The board of health shall appoint a deputy health officer, who shall be a physician in good standing, a secretary, two health inspectors, one market inspector and one messenger, whose duties shall be defined by the health officer.

Salaries.

SEC. 7. The following rates of compensation shall be allowed to the officers of the health department: Health officer, twenty-four hundred dollars per annum; deputy health officer, eighteen hundred dollars per annum; secretary, two thousand one hundred dollars per annum; two health inspectors, one thousand two hundred dollars per annum each; one market inspector, one thousand two hundred dollars per annum, and one messenger, nine hundred dollars per annum. All the salaries provided to be paid under the provisions of this act, shall be paid monthly, in equal installments, out of the general fund of said city and county, in the same manner as the salaries of the other officers of said city and county are paid; and it shall be the duty of the auditor of said city and county to allow, and of the treasurer to pay, said salaries in the manner herein provided.

Expenses.

SEC. 8. The health officer, in addition to his salary, shall receive such sums for the necessary expenses of his office as the board of health may direct, and the auditor is hereby directed to audit, and the treasurer to pay, such sums out of the general fund, and the board of supervisors shall provide proper offices for the health department.

Powers of board of health.

SEC. 9. The board of health shall have general supervision of all matters appertaining to the sanitary condition of said city and county, including the city and county hospital, the county jail, almshouse, industrial school, and all public health institutions provided by the city and county of San Francisco; and full powers are hereby given to said board to adopt such orders and regulations, and appoint or discharge such medical attendants and employees as to them seems best to promote the public welfare, and not in contravention of any law, and they may appoint as many health inspectors as they may deem necessary in time of epidemic.

Infected vessels to report.

SEC. 10. It shall be the duty of shipmasters bringing vessels into the harbor of San Francisco, and of masters, owners or consignees having vessels in said harbor, which have on board any cases of smallpox, yellow fever or Asiatic cholera, typhus or ship fever, to immediately report the same in writing to the health officer before landing any passengers, casting anchor, or coming to any wharf, or as soon thereafter as they or either of them shall become aware of the existence of either of these diseases on board of said vessel.

Landing passengers.

SEC. 11. No captain or other officer in command of any vessel sailing under a register, arriving at this port, nor any owner, consignee, agent or other person having charge of such vessel or vessels, shall, under a penalty of not less than one hundred dollars, nor more than one thousand dollars, land or permit to be landed, any freight, passengers or other persons from said vessel or vessels, till he shall have reported to the health officer, presented his bill of health and received a permit from said officer to land said freight, passengers or other persons.

Duty of pilots.

SEC. 12. It shall be the duty of every pilot who shall conduct into the port of San Francisco any vessel subject to quarantine, or to examination by the health officer:

1. To bring said vessel no nearer the town than is allowed by section fourteen of this act;
2. To prevent any person from leaving, and any communication being made with the vessel under his charge, till the health officer shall have boarded her, and shall have given the necessary orders and directions;
3. To be vigilant in preventing any violation of the quarantine laws, and to report without delay all such violations that come to his knowledge to the health officer;
4. To present the master of the vessel with a printed copy of the quarantine laws, unless he have one already; and, in the event of being subject to quarantine, by reason of infection, to place at the mast-head a small yellow flag.

Refusal to comply with sanitary regulations.

SEC. 13. Every master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of San Francisco, who shall refuse or neglect either:

1. To proceed with and anchor his vessel at the place assigned for quarantine, when legally directed so to do; or,

2. To submit his vessel, cargo and passengers to the health officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject; or neglect to report all cases of disease mentioned in this act, and all cases of death occurring on his vessel, and to comply with all the sanitary regulations of said bay and harbor, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished as provided for in section eleven of this act.

Vessels arriving from infected ports.

SEC. 14. All vessels arriving off the port of San Francisco, from ports which have been legally declared infected ports, and all vessels arriving from ports where there shall be prevailing, at the time of their departure, any contagious, infectious or pestilential diseases (especially smallpox, Asiatic cholera, typhus or ship fever), or vessels with decaying cargoes, or which have unusually foul or offensive holds, shall be subject to quarantine; and it shall be the duty of the master, owner, pilot or consignee, to report any and all such vessel or vessels to the health officer without delay. No such vessel shall cross a right line drawn from Meiggs wharf to Alcatraz island, till the health officer shall have boarded her, and given the order required by law.

Inspection of vessels.

SEC. 15. It shall be the duty of the health officer to board every vessel subject to quarantine or visitation by him, immediately on her arrival (or as soon as he shall be notified thereof), between sunrise and sunset, to make such examination and inspection of vessel, books, papers or cargo, or of persons on board, under oath, as he may judge expedient, to determine whether said vessel should be ordered to quarantine, and if so, the period of quarantine.

Landing passengers without permit.

SEC. 16. No captain or other officer in command of any passenger-carrying vessel of more than one hundred and fifty tons burden, nor of any vessel more than one hundred and fifty tons burden having passengers on board, nor any owner, consignee, agent or other person having charge of such vessel or vessels, shall, under a penalty of not less than one hundred dollars, nor more than one thousand dollars, land or permit to be landed any passenger or passengers from said vessel or vessels, until he shall have presented his bill of health to the health officer, and received a permit from that officer to land said passenger or passengers, except in such cases as the health officer shall deem it safe to give the permit before seeing the bill of health.

Fees.

SEC. 17. The following fees shall be collected by the health officer: For giving a permit to land freight or passengers, or both, from any vessel of less than one thousand tons burden, from any port out of this state, two and a half dollars; from any port in this state, one dollar and a quarter; from any passenger-carrying vessel of more than one thousand tons burden, three dollars and seventy-five cents; from vessels of more than one thousand tons burden, carrying no passengers, two dollars and fifty cents; provided that vessels carrying less than twenty passengers shall in no case pay more than two dollars and a half; but this shall not apply to sailing vessels sailing to and from any port of the Pacific states of the United States or territories, or to whaling vessels entering the harbor of San Francisco, excepting that they shall report to the health officer, as provided for in section ten of this act.

Vaccination.

SEC. 18. The health officer or his deputy shall board any vessels bringing passengers from Asiatic ports and coming into the harbor of San Francisco, and then and there, in his discretion, vaccinate each and every one of said passengers before they shall be permitted to land in the city and county of San Francisco.

Re-vaccination.

SEC. 19. In case there shall be any person on board the vessels mentioned in section ten, who shall actually be sick with the smallpox, the health officer is hereby authorized to require each and every person on board said vessel to be re-vaccinated, if he or she has been previously vaccinated, or to be then and there vaccinated for the first time.

Master of vessel to aid health officer.

SEC. 20. It shall be the duty of each and every master, or other officer having command of such vessel, to aid the health officer in performing the duties herein required, by anchoring the vessel in the bay, and by all other suitable and reasonable means, until said vaccination shall have been completed; and any master, or other officer in command of such vessel, who shall neglect or refuse to render such assistance in carrying out the provisions of this section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not less than one hundred dollars, nor more than five hundred dollars.

Fee for vaccination.

SEC. 21. The fees of the health officer for vaccinating such passengers shall be one dollar for each and every person so vaccinated; and all persons refusing to be vaccinated, or to pay fee therefor, shall be detained at quarantine on board said vessel until they are vaccinated and pay the fee therefor, and he is hereby authorized to collect the said fee from the person or persons vaccinated.

Hospitals.

SEC. 22. The board of health shall have the power, under the provisions of this act, to provide suitable hospitals, to be situated at or near Saucelito, and furnish and supply the same with suitable nurses and attaches, as in their judgment the public health may require, and to remove thereto all persons afflicted with cholera, yellow fever, typhus or ship fever.

Record of births, deaths, etc.

SEC. 23. It shall be the duty of the health officer to keep a record of all births, deaths, and interments in the city and county of San Francisco, in books duly prepared for that purpose. Said records, when filled, shall be deposited in the office of the county recorder, and produced when required for public inspection.

Interment without certificate.

SEC. 24. Every sexton, undertaker, superintendent of a cemetery, or other person, who shall inter, or cause to be interred, any human body, without having first obtained and filed with the health officer a physician's certificate, or the coroner's certificate, setting forth, as nearly as possible, the name, age, color, sex, and date and place of birth, date and locality of death, and cause of death of the deceased, shall be deemed guilty of misdemeanor, and on conviction shall be punished as provided in section twenty-nine of this act.

Physician's certificate.

SEC. 25. It shall be the duty of the physicians, when deaths occur in their practice, to give a certificate to that effect, with the name, age, color, nativity, date of death, place of death, and occupation of deceased. For this purpose, blank certificates shall be kept at the health office.

Notice of birth to be given.

SEC. 26. It shall be the duty of the parent or parents, or, in the case of their death, then of the next of kin in attendance, or, if there be no relative in attendance, then of the person having charge or control of any child born within the limits of the city and county of San Francisco, to report the same to the health officer within ten days of its birth, giving name (if named), date of birth, sex, color; name, birthplace, and occupation of father; maiden name and birthplace of mother; and place of birth. Blanks for this purpose shall be kept at the health office. All persons failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine of not less than five dollars nor more than fifty dollars. [*Amendment, approved March 16, 1876; 1875-6, 305; took effect from passage.*]

Returns of permits for interments.

SEC. 27. Superintendents of cemeteries within the boundaries of the city and county of San Francisco, shall make returns to the health officer on each Monday of all permits for interment received by them during the preceding week.

Removal of bodies.

SEC. 28. No superintendent of any cemetery shall remove, or cause to be removed, disinter, or cause to be disinterred, any corpse that shall have been deposited in said cemetery, without a permit from the health officer, or by order of the coroner.

Violations of this act.

SEC. 29. Any person who shall neglect or refuse to comply with any of the provisions of this act shall be deemed guilty of misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both fine and imprisonment.

Removal of nuisances.

SEC. 30. Whenever a nuisance shall exist on the property of any non-resident, or any property the owner or owners of which cannot be found by either health inspector, after diligent search, it shall be the duty of the board of health to cause the said nuisance to be at once removed, and to draw upon the general fund for such sums as may be required for its removal, not to exceed two hundred dollars; provided, that whenever a larger expenditure is found necessary to be made for the removal or suppression of any nuisance, the board of supervisors of said city and county may, upon the written application of the board of health, by ordinance, appropriate, allow, and order paid out of the general fund such sum or sums as may be necessary for that purpose; provided further, that in all cases where such expenditure will exceed five hundred dollars, no appropriation shall be made for that purpose, unless the city and county attorney shall first give his opinion, in writing, that such expenditure would be a legal charge against the property affected thereby. The auditor shall audit and the treasurer shall pay all appropriations of money made in pursuance of this section, in the same manner as is now provided by law for auditing and paying demands upon the treasury. [*Amendment, approved March 16, 1876; 1875-6, 305; took effect from passage.*]

Jurisdiction.

SEC. 31. The police judge's court of the city and county of San Francisco shall have full and complete jurisdiction of all actions and proceedings for the violation of the provisions of this act.

Fee book.

SEC. 32. It shall be the duty of the health officer to have kept in his office a book in which shall be entered all fees collected by him; and he shall cause the same to be paid over to the city and county treasurer weekly, under oath, to the credit of the general fund.

Bond.

SEC. 33. The health officer, before entering on his duties, shall give bonds with good and sufficient security, to be approved by the board of health, in the sum of ten thousand dollars for the faithful performance of his duties.

Oaths.

SEC. 34. Any member of the board of health, deputy health officer, or secretary of the health department shall be empowered to administer oaths on business connected with that department.

SEC. 35. All acts or parts of acts in conflict with this act or any of its provisions, are hereby repealed.

SEC. 36. This act shall take effect immediately after its passage.

An Act amendatory of and supplementary to the foregoing act of April 4, 1870.

Approved March 16, 1876; 1875-6, 305.

Quarantine officer and his bond.

SECTION 1. From and after the passage of this act the deputy health officer of the city and county of San Francisco shall be known as the quarantine officer. He shall have power to perform all acts which he has heretofore performed under the title of deputy health officer, and all acts which quarantine officers are usually authorized to perform. He shall give bonds, with good and sufficient security, to be approved by the board of health, in the sum of five thousand dollars.

Health inspectors, salaries of.

SEC. 2. There shall be four health inspectors for the city and county of San Francisco, who shall be appointed by the board of health, and shall receive twelve hundred dollars per annum each, to be paid in the same manner as is provided for the payment of the salaries of the other appointees of the board of health.

[SEC. 3 contained the amendment to section 30 of the foregoing act, therein inserted.]

Transportation of deceased persons.

SEC. 4. No person, master, captain, or conductor, in charge of any boat, vessel, railroad car, or public or private conveyance, shall receive for transportation, or shall transport the body of any person who has died within the limits of the city and county of San Francisco, without obtaining a permit for the same from the health officer, which permit must accompany the body to its destination; and no person, master, captain, or conductor, as aforesaid, shall bring into or transport through the said city and county the dead body of any person, unless it be accompanied with a certificate from some proper authority of the place whence it came, stating name, age, sex, and cause of death, which certificate shall be filed at the health office; provided, that in no case shall the body of any person who died of a contagious disease be brought to the city within one year of the day of death.

[SEC. 5 contained the amendment to section 26 of the foregoing act, therein inserted.]

SEC. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect from and after its passage.

ARTICLE IV.

HEALTH REGULATIONS FOR THE CITY OF SACRAMENTO.

3042. *Board of health, who and how appointed.*

SEC. 3042. The board of trustees of the city of Sacramento may establish by ordinance a board of health therefor, to consist of five practicing physicians, graduates of a medical college of recognized respectability; and the president of the board of trustees is ex officio president of the board.

3043. *Term and vacancies.*

SEC. 3043. The members of the board hold their offices at the pleasure of the appointing power.

3044. *Powers of the board of health.*

SEC. 3044. The board of health of the city of Sacramento has a general supervision of all the matters appertaining to the sanitary condition of the city, and may make such rules and regulations in relation thereto as are not inconsistent with law.

3045. *Pest houses, how located and conducted.*

SEC. 3045. The board of health may locate and establish pest houses, and cause to be removed thereto and kept any person having a contagious or infectious disease; may discontinue or remove the same, and make such rules and regulations regarding the conduct of the same as are needful.

3046. *Death records.*

SEC. 3046. The board of health must exercise a general supervision over the death records of the city of Sacramento, and may adopt such forms and regulations for the use and government of physicians, undertakers, and superintendents of cemeteries as in their judgment may be best calculated to secure reliable statistics of the mortality in the city and prevent the spread of disease.

3047. *Enforcement of regulations.*

SEC. 3047. The board of trustees of the city of Sacramento must, by ordinance or otherwise, provide for enforcing such orders and regulations as the board of health may from time to time adopt; and in times of epidemics, or when deemed necessary by the board of health, a health officer must be employed to enforce the laws in relation to the sanitary condition of the city.

3048. *Expenses, how paid.*

SEC. 3048. All expenses necessarily incurred in carrying out the provisions of this article must be provided for by the board of trustees of the city of Sacramento, who may make appropriation therefor out of the special street fund, if the same is sufficient; if not, they may by taxation provide a fund therefor.

3049. *Compensation, how fixed.*

SEC. 3049. The board of trustees must fix the compensation of the board of health and the health officer.

An Act to establish and maintain a dispensary in the city of Sacramento.

Approved, March 23, 1872; 1871-2, 531.

Establishment of dispensary.

SECTION 1. The board of health of the city of Sacramento, consisting of Ira E. Oatman, T. M. Logan, F. W. Hatch, W. R. Cluness, and G. L. Simmons, are hereby empowered and required to establish a dispensary for the accommodation of the sick poor of the city and county of Sacramento, on the lot belonging to the county of Sacramento, on the northwest corner of Seventh and I streets, in said city; and all bills approved by said board of health for this purpose shall be allowed and ordered paid, by the board of supervisors of the county of Sacramento, out of the general fund; provided, that all expense for

the establishment of such dispensary and furnishing of the same shall not exceed two thousand dollars.

Physician.

SEC. 2. The board of supervisors of the county of Sacramento shall require the county physician, or a regularly educated assistant, to take charge of said dispensary, and to keep an office open therein for at least two hours in each day of the year, at which time he shall give advice and medicines to poor out-patients and applicants from the Howard benevolent society, and receive orders for visits to the sick poor at their homes, and said assistant shall receive a compensation not to exceed fifty dollars per month.

Regulations.

SEC. 3. During the absence of the medical attendant the dispensary shall be accessible, at all times of the day or night, to any member of the police of the city of Sacramento, to any practicing physician, or to any officer of the Howard benevolent society who may desire to obtain accommodations for patients in cases of accident or sudden sickness, where an immediate removal to the county hospital is impracticable, or where such an attempt would endanger life.

Prohibition.

SEC. 4. No person possessed of property of any description shall receive assistance, as an out-patient, from the dispensary, and no cases of venereal disease in any form shall be treated at the expense of the county in this institution.

Control and management.

SEC. 5. After the establishment of the dispensary by the board of health of the city of Sacramento the said board shall exercise a general supervision over its concerns, adopting such improvements in its management as from time to time may be required. They shall require from the attending physician stated reports in regard to cases treated by him, and certify to the board of supervisors of the county as to the correctness of all bills for medicines or incidental expenses; provided, that in no case shall any bills for medicines and incidental expenses be allowed which exceed in the aggregate the sum of one hundred dollars per month. No compensation shall be allowed to any member of the board of health for services rendered in carrying out the purposes of this act.

Payment of expenses.

SEC. 6. The board of supervisors of Sacramento county are hereby required to allow and order paid out of the hospital fund all bills for the maintenance of this dispensary which may be approved by the board of health of the city of Sacramento, in compliance with the preceding sections.

SEC. 7. This act shall take effect and be in force from and after its passage.

ARTICLE V.

HEALTH AND QUARANTINE OF OTHER CITIES, TOWNS, AND HARBORS.

3059. Boards of supervisors may adopt Article III.

SEC. 3059. The board of supervisors of any county in which there is a port of entry or harbor, for which there is not otherwise provided health and quarantine regulations, may by an ordinance adopt the whole or any part of the provisions of Article III of this chapter, appoint a board of health, or health officer, locate quarantine grounds when necessary, and provide for the enforcement of health and quarantine regulations.

3060. Boards of supervisors may adopt Article IV.

SEC. 3060. In like manner the board of supervisors of any county in which there is an unincorporated city or town, for which there is not otherwise pro-

vided a board of health or health regulations in time of epidemics, or the existence of contagious or infectious diseases, may by an ordinance adopt for such city or town, in whole or in part, the provisions of Article IV of this chapter for some definite period of time; and appoint therefor a board of health.

2061. *Incorporated cities or towns may adopt Articles III and IV.*

SEC. 3061. The trustees, council, or other corresponding board of any incorporated town or city in this state, may by ordinance adopt the whole or any part of Articles III and IV of this chapter, or of either of them, as provided in the preceding section for the boards of supervisors.

3062. *May appoint health officer in lieu of board.*

SEC. 3062. In the place of appointing a board of health, the board of supervisors or the city or town authorities may appoint a health officer, with all the duties and powers of the board of health and health officer, as specified in the two preceding articles.

3063. *Per capita or property tax, how levied.*

SEC. 3063. All necessary expenses of enforcing this article are charges against the counties, cities, or towns respectively, for the payment of which the county, city, or town may levy a per capita tax of not exceeding three dollars, or a property tax of not exceeding one fourth of one per cent. yearly until the same is paid.

CHAPTER III.

REGISTRY OF BIRTHS, MARRIAGES, AND DEATHS.

3074. *Registry of marriages.*

SEC. 3074. All persons who perform the marriage ceremony must keep a registry of the time of each marriage so celebrated, the residence, the names in full, the place of birth, the age and condition of each party, and whether either party has ever been before married; if so, to whom and whether the person with whom such former marriage was contracted is living or dead.

3075. *Registry of births.*

SEC. 3075. All physicians and professional midwives must keep a registry of the time of each birth at which they assist professionally, the sex, race, and color of the child, and the names and residence of the parents.

3076. *Registry of death.*

SEC. 3076. Physicians, who attend deceased persons in their last sickness; clergymen, who officiate at a funeral; coroners, who hold inquests; sextons and undertakers, who bury deceased persons; must each keep a register of the name, age, residence, and time of death of such person. [*Amendment, approved March 30, 1874; Amendments 1873-4, 42; took effect July 6, 1874.*^(a)]

3077. *Reports to recorder.*

SEC. 3077. All persons registering births or deaths must quarterly file with the county recorder a certified copy of their register. All such certificates must specify as near as may be ascertained the name in full, age, occupation, term of residence in the city or county, birthplace, condition, whether single or married, widow or widower, race, color, last place of residence, and cause of death of all decedents.

3078. *Same.*

SEC. 3078. If at any birth no physician or midwife attends, the parents must make the report.

(a) The original section had the words "have attended" instead of "attend," also "have officiated" instead of "officiate," and "sextons who have buried" instead of "sextons and undertakers who bury."

3079. Duties of recorder.

SEC. 3079. The recorder must keep separate registers, to be known as the "Register of Births" and the "Register of Deaths," in which the births and deaths certified to him must be numbered in the order in which they are reported to him. There must be stated in each register, in separate columns, properly headed, the various facts contained in the certificates, and the name and official or clerical position of the person making the report. The recorder must carefully examine each report and register the same birth or death but once, although it may be reported by different persons.

3080. Report to secretary of state board of health.

SEC. 3080. The county recorder must every three months transmit to the secretary of state board of health, at Sacramento city, a certified abstract of the registers of births, marriages, and deaths, prepared in the manner prescribed in the instructions of the secretary and upon blanks to be furnished by him for that purpose.

3081. Fees.

SEC. 3081. The persons reporting births and deaths to the recorder must pay to him a fee of twenty-five cents for the registration of each name, which must be primarily paid by the parents or other next of kin to the person whose birth or death is reported. In case no fee is paid to the person reporting a birth or death to the recorder by the parents or next of kin of the person reported, the same must nevertheless be reported and registered, and the board of supervisors must pay from the general fund of the county to the recorder a fee not exceeding twenty-five cents for each name reported.

3082. Penalties.

SEC. 3082. Any person on whom a duty is imposed by this chapter who fails, neglects, or refuses to perform the same as herein required, is liable to a penalty of fifty dollars, to be recovered by the district attorney of the proper county for the use of the general fund of such county.

CHAPTER IV.

DISSECTION.

3093. Physicians, etc., may obtain dead bodies.

SEC. 3093. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as herein-after provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction.

3094. Sheriffs, etc., to give dead bodies to physicians in certain cases.

SEC. 3094. Any sheriff, coroner, keeper of a county poorhouse, public hospital, county jail, or state prison, or the mayor or board of supervisors of the city of San Francisco, must surrender the dead bodies of such persons as are required to be buried at the public expense to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being always given to medical schools by law established in this state, for their use in the instruction of medical students. But if such deceased person during his last sickness requested to be buried, or if within twenty-four hours after his death some person claiming to be of kindred or a friend of the deceased requires the body to be buried, or if such deceased person was a stranger or traveler who suddenly died before making himself known, such dead body must be buried without dissection.

3095. *Physicians, etc., to have certificate from medical society, and to give bond before receiving dead bodies.*

SEC. 3095. Every physician or surgeon, before receiving a dead body, must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond, with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose within this state only, and so as in no event to outrage the public feeling.

CHAPTER V.

CEMETERIES AND SEPULTURE.

3105. *Title to cemetery grounds.*

SEC. 3105. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village, and used by the inhabitants thereof continuously, without interruption, as a burial ground for five years, is vested in the inhabitants of such city, town, or village, and the lands must not be used for any other purpose than a public cemetery.

3106. *What constitutes a cemetery.*

SEC. 3106. Six or more human bodies being buried at one place constitutes the place a cemetery.

3107. *Cemeteries, how laid out and dedicated on public lands.*

SEC. 3107. Incorporated cities or towns, and for unincorporated towns or villages, the supervisors of the county, may survey, lay out, and dedicate of the public lands situated in or near such city, town, or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the recorder's office of the county in which the same is located.

3108. *Inhabitants of city, town, or village to own cemetery.*

SEC. 3108. The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation, lands not exceeding five acres, to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated to use for burial purposes must thereafter be used for no other purpose.

3109. *Public cemeteries, under whose control.*

SEC. 3109. The public cemeteries of cities, towns, villages, or neighborhoods must be inclosed and laid off into lots, and the general management, conduct, and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots and keeping the same in order, is under the jurisdiction and control of the cities and towns owning the same, if incorporated; if not, then under the jurisdiction and control of the board of supervisors of the county in which they are situated.

3110. *Who exercises jurisdiction and control over.*

SEC. 3110. The boards of supervisors, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons or other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary.

3111. Register must be kept.

SEC. 3111. The authority having control of a public cemetery must require a register of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

CHAPTER VI.

LOST AND UNCLAIMED PROPERTY.

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ARTICLE I.

LOST MONEY AND GOODS.

3136 Duty of persons finding lost money, goods, etc.

SEC. 3136. If any person find any money, goods, things in action, or other personal property, or shall save any domestic animal from drowning or from starvation, when such property shall be of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation, further than a reasonable charge for saving and taking care thereof; but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some justice of the peace of the county, stating when and where he found or saved such property, particularly describing it; and if the property was saved, particularly stating from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld or disposed of any part of such property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 42; took effect July 6, 1874.*]^(a)

3137. Justice to appoint appraisers—Duty of appraisers.

SEC. 3137. The justice must then summon three disinterested householders to appraise the same. The appraisers, or any two of them, must make two lists of the valuation and description of such property, and sign and make oath to the same, and deliver one of the lists to the finder, and the other to the justice of the peace.

3138. Justice to file list of appraisers.

SEC. 3138. The justice must file such list, and the finder must transmit a copy of the same to the recorder of the county, who must record the same in a book known as the "Estray and Lost Property Book," within fifteen days, and the finder must at once set up at the court-house door and four other public places in the township or city a copy of such valuation and description of property.

3139. Proceedings, if no owner appear within six months.

SEC. 3139. If no owner appears and proves the property within six months, and the value thereof does not exceed twenty dollars, the same vests in the finder; but if the value exceed twenty dollars, the finder must, within thirty days after setting up the list mentioned in the preceding section, cause a copy of the description to be inserted in some newspaper printed in the county, if there be one, and if not, in some newspaper printed in the state, for three

(a) Original section:

S.E.C. 3136. If any person find any money, goods, things in action, or other personal property of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation, further than a reasonable charge for taking

care thereof; but if the owner is not known, he must, within five days, make an affidavit before some justice of the county, stating when and where he found the same, particularly describing it, that the owner is unknown to him, and that he has not secreted, withheld, or disposed of any part of such property.

weeks; and if no owner prove the property within one year after such publication it vests in the finder.

3140. *Finder to restore property, when.*

SEC. 3140. If, within one year, an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property, or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any court having jurisdiction.

3141. *Finder failing to make discovery, penalty.*

SEC. 3141. If any person find any money, property, or other valuable thing, and fail to make discovery of the same as required by this article, he forfeits to the owner double the value thereof.

3142. *Proof, how made.*

SEC. 3142. The proof required by this article must be made before the clerk with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be is the owner, he must certify that fact under his hand and the seal of the county court.

ARTICLE II.

UNCLAIMED PROPERTY.

3152. *Common carriers may retain goods until charges are paid.*

SEC. 3152. When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission merchants, innkeepers, or warehousemen, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, innkeeper, or warehouseman, may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid.

3153. *Property unclaimed within sixty days to be sold, how.*

SEC. 3153. If no person calls for the property within sixty days from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, innkeeper, or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

3154. *Proceeds unclaimed, where to go.*

SEC. 3154. If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

3155. *Carrier's responsibility ceases, when.*

SEC. 3155. After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care.

3156. *Property upon which advances are due may be sold, when.*

SEC. 3156. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within sixty days from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein.

3157. *Fees of officers.*

SEC. 3157. The fees of officers under this chapter are the same allowed for similar services in other cases provided in this code, to be paid by the taker up or finder, and recovered of the owner.

CHAPTER VII.

MARKS AND BRANDS.

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ARTICLE I.

MARKS AND BRANDS.

3167. *Owners of cattle to keep a mark, brand, and counterbrand.*

SEC. 3167. Owners of horses, mules, cattle, sheep, goats, or hogs running at large must have a mark, brand, and counterbrand different from any one in use by any other person, so far as may be known.

3168. *To record brands.*

SEC. 3168. Every owner must record with the recorder of the county his mark, brand, and counterbrand by delivering to the recorder his mark, cut upon a piece of leather, and his brand and counterbrand burnt upon it, which shall be kept in the recorder's office. A certified copy thereof made by the recorder, with the seal of his office attached thereto, is evidence on the trial of any action in a court of competent jurisdiction as to the ownership of all animals legally marked or branded. The recorder must enter in a book to be kept by him for that purpose a copy of the marks, brands, and counterbrands; but he must first be satisfied that such brand and counterbrand tendered to him for record is unlike any other mark, brand, or counterbrand in the county, and, as far as his knowledge extends, is different from any other in the state. For recording the mark, brand, and counterbrand the recorder is entitled to demand and receive one dollar.

3169. *Recorders' duties respecting recorded marks, etc.*

SEC. 3169. Every recorder in this state must transmit to the recorders of the adjoining counties a transcript of all the marks, brands, and counterbrands recorded in his office, to be filed by such recorders in their offices, and reference thereto must be made in every case of application for the record of marks and brands.

3170. *Marks and brands not lawful unless recorded.*

SEC. 3170. No mark, brand, or counterbrand is lawful unless recorded as provided in this article, nor shall any person use more than one mark or brand, unless he is the owner of more than one ranch or farm.

3171. *Certain marks not allowed.*

SEC. 3171. No person must use a mark by cutting off the ear or by cutting the ear on both sides to a point.

3172. *Branding of animals.*

SEC. 3172. Every person must mark or brand his horses and mules before they are eight months old, and cattle before they are twelve months old, on the hip or hinder part, and mark or brand his sheep, goats, and hogs, before they are six months old. On the trial of any action to recover the possession of any animal which is marked or branded, the mark or brand is prima facie evidence that the animal belongs to the owner of the mark or brand. When a dispute occurs in regard to a mark or brand, the person first recording the same is entitled thereto. [*Amendment, approved March 30, 1874; Amendments 1873-4, 43; took effect July 6, 1874.*^(a)]

ARTICLE II.

REGULATIONS RELATING TO MARKS AND BRANDS.

3182. *Regulations for selling cattle, etc.*

SEC. 3182. Persons selling cattle, horses, mules, jacks, or jennies, must counterbrand them on the shoulders, or give a written descriptive bill of sale.

3183. *Penalty for using more than one mark or an unrecorded mark.*

SEC. 3183. Any person who uses any mark, brand, or counterbrand other than the one recorded by him, except by the consent of the owner of such other mark, brand, or counterbrand, or uses more than one mark, brand or counterbrand otherwise than is provided in Article I, or suffers his ward, child, apprentice, or servant to use any other than his own mark, brand, or counterbrand on those of the stock they run with, forfeits to any person suing therefor the stock so marked or branded with any other than the proper mark or brand recorded by him. This section does not extend to any stock which may descend to any ward, child, apprentice, or servant by the gift or devise of any person other than the guardian, parent, or master of such ward, child, apprentice, or servant; but the marks, brands, and counterbrands of such minors, apprentices, or servants must be recorded as other marks, brands, and counterbrands.

3184. *Fraudulently mismarking cattle.*

SEC. 3184. If any person has knowledge of any person, who, with the intent to defraud or willingly mismarks or misbrands any stock not his own, or kills any stock running at large having a proper owner, the person having such knowledge must, within ten days thereafter, give information thereof to some justice of the peace of the proper county.

3185. *Hides of slaughtered cattle to be kept.*

SEC. 3185. All persons slaughtering cattle must keep the hides, with the ears attached, for fifteen days; and all persons having such hides in their possession must exhibit the same for examination on demand being made by any person.

ARTICLE III.

TRADE-MARKS.

3196. *"Trade-marks" defined.*

SEC. 3196. The phrase "trade-mark" as used in this chapter includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

(a) The original section had the word "primary" instead of "prima facie."

3197. *Person may secure exclusive use of trade-mark, how.*

SEC. 3197. Any person may secure the exclusive use of any such trade-mark or name by filing with the secretary of state his claim to the same and a copy or description of such trade-mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner or agent of the owner of such trade-mark or name.

3198. *Record of trade-marks kept by secretary of state.*

SEC. 3198. The secretary of state must keep for public examination a record of all trade-marks or names filed in his office, with the date when filed and name of claimant; and must at the time of filing collect from such claimant a fee of three dollars in gold coin, to be paid into the state library fund.

3199. *Original owners of trade-marks.*

SEC. 3199. Any person who has first adopted, recorded, and used a trade-mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, any use of trade-marks or names in violation of this chapter.

CHAPTER VIII.

WEIGHTS AND MEASURES.

3209. *Standard of weights and measures.*

SEC. 3209. The standard weights and measures now in charge of the secretary of state being the same that were furnished to this state by the government of the United States, and consisting of one standard yard measure; one set of standard weights, comprising one troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five, and fifty pounds, respectively; one set of standard troy ounce weights, divided decimally from ten ounces to the one ten-thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one half gallon, one quart, one pint, and one half pint measure; and one standard half bushel, containing one thousand and seventy-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as the standard, are the standards of weights and measures throughout the state.

3210. *Unit of extension.*

SEC. 3210. The standard yard is the unit or standard measure of length and surface from which all other measures of extension, whether lineal, superficial, or solid, are derived and ascertained.

3211. *Division of yard.*

SEC. 3211. The yard is divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; for measures of cloth and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths.

3212. *Rod, mile, and chain.*

SEC. 3212. The rod, pole, or perch contains five and a half yards, and the mile one thousand seven hundred and sixty yards; the chain for measuring land is twenty-two yards long, and divided into one hundred equal parts called links.

3213. Acre.

SEC. 3213. The acre for land measure must be measured horizontally, and contains ten square chains, and is equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

3214. Unit of weights.

SEC. 3214. The standard avoirdupois and troy weights are the units or standards of weight from which all other weights are derived and ascertained.

3215. Division of pound.

SEC. 3215. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundred weight consists of one hundred avoirdupois pounds, and twenty hundred weight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound.

3216. Unit of liquid measures.

SEC. 3216. The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained.

3217. Barrel and hogshead.

SEC. 3217. The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

3218. Unit of solid measure.

SEC. 3218. The standard half bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained.

3219. Division of half bushel.

SEC. 3219. The peck, half peck, quarter peck, quart, and pint measures for measuring commodities other than liquid are derived from the half bushel by successively dividing that measure by two.

3220. Division of capacity for commodities sold by heap measure.

SEC. 3220. The measures of capacity for coal, ashes, marl, manure, Indian corn in the ear, fruit, and roots of every kind, and for all other commodities commonly sold by heap measure, are the half bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plane and even bottom, and must be of the following diameters from outside to outside: the bushel, nineteen and a half inches; half bushel, fifteen and a half inches, and the peck, twelve and a third inches.

3221. Heap measure.

SEC. 3221. All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure, by which the same are measured, to be the limit of the base of the cone, and such cone to be as high as the article will admit.

3222. Contracts construed accordingly.

SEC. 3222. Contracts made within this state for work to be done or for anything to be sold or delivered by weight or measure, must be construed according to the foregoing standards.

3223. Weights of bushels of various products.

SEC. 3223. Whenever wheat, rye, Indian corn, barley, buckwheat, or oats are sold by the bushel, and no special agreement as to the weight or measurement is made by the parties, the bushel consists of sixty pounds of wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of fifty pounds of barley, of forty pounds of buckwheat, and of thirty-two pounds of oats.

CHAPTER IX.

LABOR AND MATERIAL ON PUBLIC BUILDINGS.

3233. *Labor on public buildings must be done by day's work.*

SEC. 3233. All work done upon the public buildings of this state must be done under the supervision of a superintendent, or state officer or officers having charge of the work, and all labor employed on such buildings, whether skilled or unskilled, must be employed by the day, and no work upon any of such buildings must be done by contract.

3234. *Material must be furnished by contract.*

SEC. 3234. All materials to be used on any of the public buildings must be furnished by contract, in accordance with the plans and specifications and proposals therefor.

An Act to regulate the erection of public buildings and structures.

Approved April 1, 1872; 1871-2, 925.

Plans and specifications—Advertisement.

SECTION 1. When by any statute of this state power is given to any state or county officer or officers, or to any board of supervisors or corporation, or any board of trustees or commissioners, or other person or persons created or appointed by authority of any such statute, to erect, or cause to be erected or constructed, any state or county or other building or structure, it shall be the duty of said officer or officers, board of supervisors, corporation, or board of trustees, or commissioners, or other person or persons, to advertise for plans and specifications in detail for said building or other structure, and to state in said advertisement the amount authorized by law or otherwise to be expended for the erection of said building or structure; and also the premium to be awarded to the architect whose plans and specifications for the same may be adopted.

Architect's bond for contract.

SEC. 2. Whenever the plans and specifications of any architect shall be adopted, such officer or officers, board of supervisors, or corporation, or board of trustees, or commissioners, or other person or persons so adopting the same, shall, before any premium shall be awarded for such plans and specifications, require such architect to execute and file with such officer or officers, board of supervisors, corporation, or board of trustees, or commissioners, or other person or persons, a good and sufficient bond, with two sufficient sureties thereto, in the penal sum of five thousand dollars, to be approved by such officer or officers, board of supervisors, corporation, or board of trustees, or commissioners, or other person or persons, as the case may be, and conditioned that within sixty days from the date of said bond he will, on presentment to him, enter into a contract containing such provisions and conditions as may be required by such officer or officers, board of supervisors, corporation, or board of trustees, or commissioners, or other person or persons; and also conditioned that he will give such further bond to secure the faithful performance of such contract, with such sureties as may be required of him, in the event that such officer or officers, board of supervisors, corporation, or board of trustees, or commissioners, or other person or persons, so acting under authority of law should, within said sixty days, require said architect to enter into such contract to erect such building or structure, at the price named in said advertisement to be expended for such purpose. In case said architect whose plans and specifications are adopted should enter into such contract, it shall be the duty of such officer or officers, board of supervisors, corporation, or board of

trustees, or commissioners, or other person or persons, to employ a competent architect or superintendent to superintend the erection of such building or structure, and to see that such plans and specifications are faithfully carried out.

When contracts void.

SEC. 3. All contracts entered into by such officer or officers, board of supervisors, corporation, board of trustees, commissioners, or other person or persons, in violation of the provisions of this act, shall be null and void.

SEC. 4. This act shall take effect and be in force from and after its passage.

An Act to regulate contracts on behalf of the state, in relation to erections and buildings.

Approved March 23, 1876; 1875-6, 427.

Before contracting, plans to be furnished.

SECTION 1. That in all cases where the commissioners, directors, trustees, or other officer or officers, to whom is confided by law the duty of devising and superintending the erection, alteration, addition to, or improvement of any state institution, asylum, or other improvement, erected, or now being erected, or to be erected, by the state, such commissioners, directors, trustees, or other officer or officers, before entering into any contract for the erection, alteration, addition to, or improvement of such institution, asylum, or other improvement, or for the supply of materials therefor, the aggregate cost of which erection, alteration, addition, or improvement, and materials therefor, exceed the sum of three thousand dollars, shall make, or procure to be made, a full, complete, and accurate plan or plans of such institution, asylum, or other improvement, or of any addition to, or alteration, or improvement thereof, in all its parts, showing all the necessary details of the work, together with working plans suitable for the use of the mechanics or other builders during the construction thereof, so drawn and represented as to be plain and easily understood; and, also, accurate bills, showing the exact amount of all the different kinds of materials necessary in the erection thereof, addition thereto, or in the alteration or improvement thereof, to accompany said plan or plans; and, also, full and complete specifications of the work to be done, showing the manner and style in which the same will be required to be done, giving such directions for the same as will enable any competent mechanic or other builder to carry them out, and afford the bidders all needful information to enable them to understand what will be required in the erection, addition to, alteration, or improvement of such institution, asylum, or other improvement, and to make, or cause to be made, a full, accurate, and complete estimate of each item of expense, and the entire aggregate cost of such institution, asylum, or other improvement, or of any addition to, alteration, or improvement thereof, when completed.

Plans, etc., to be approved by governor, treasurer, and secretary of state.

SEC. 2. That such plans, drawings, representations, bills of materials, and specifications of work, and estimates of the cost thereof, in detail and in the aggregate, as are required in the first section of this act to be made, shall be, when made, submitted to the governor, state treasurer, and secretary of state, for their approval, and if approved by them, a copy thereof shall be deposited and safely kept in the office of controller of state.

Sealed proposals, notice of.

SEC. 3. That after such plans, descriptions, bills of materials, and specifications, and estimates, as are in this act required, are made and approved, in accordance with the requirements of this act, it shall be, and is hereby made, the duty of such commissioners, directors, trustees, or other officer or officers, to whom the duty of devising and superintending the erection, addition to, alteration, or improvement of such institution, asylum, or other improvement,

as in this act provided, to give or cause to be given public notice of the time and place, when and where sealed proposals will be received for performing the labor and furnishing the materials necessary to the erection of such institution, asylum, or other improvement, or for the adding to, altering, or improvement thereof, and a contract or contracts, based on such sealed proposals, will be made; which notice shall be published weekly for four consecutive weeks next preceding the day named for the making of such contract or contracts, in the paper having the largest circulation in the county where the work is to be let, and in two daily papers having the largest circulation and published each in the cities of San Francisco and Sacramento, and shall state when and where such plan or plans, descriptions, bills, and specifications can be seen, and which shall be open to public inspection at all business hours between the date of such notice and the making of such contract or contracts.

Bond that contractor will perform contract.

SEC. 4. That on the day named in said public notice, said commissioners, directors, trustees, or officer or officers as aforesaid, shall proceed to publicly open said sealed proposals, and shall award such contract or contracts for doing the work and furnishing materials for the same, to the lowest bidder, giving responsible bonds; provided, always, that no proposals shall be considered unless accompanied with a bond of said proposer, equal to ten per cent. of his proposal, with sufficient sureties, conditioned, that if said proposal shall be accepted, the party proposing will duly enter into a proper contract, and faithfully perform his or their contract or contracts, in accordance with said proposal, and the plan or plans, specifications, and descriptions, which shall be and are hereby made a part of such contract or contracts; and provided further, that such contract or contracts shall not be binding on the state until they are submitted to the attorney-general, and by him found to be in accordance with the provisions of this act, and his certificate thereon to that effect made; and provided further, that if in the opinion of such commissioners, directors, trustees, or other officer or officers, the acceptance of the lowest bid or bids shall not be for the best interests of the state, it may be lawful for them, with the written advice and consent of the governor, state treasurer, and secretary of state, to accept such proposal or proposals opened, as in their opinion may be better for the interests of the state, or reject all proposals and advertise for others in the manner aforesaid. All contracts shall provide that such commissioners, directors, trustees, or other officer or officers may, as hereinafter provided, and on the conditions stated, make any change in the work or materials.

No change in plan to be made unless approved as original.

SEC. 5. That no change of the plan or plans, descriptions, bills of materials, or specifications, which shall either increase or decrease the cost of said institution, asylum, building, or improvement, exceeding the sum of one thousand dollars, shall be made or allowed, after they are once approved and filed with the controller of state as herein required, until such proposed change shall have received the approval of the governor, state treasurer, and secretary of state; and when so approved, the plan or plans of such change, with the description thereof, and the specifications of the work, and bills of material, shall be filed with the controller of state in the same manner as required before such change was made; and no allowance whatever shall be made for work performed or materials furnished under such change of plan or plans, or descriptions, or specifications, or bills of materials, unless, before such labor is performed and materials furnished, a contract or contracts therefor is made in writing, which contract or contracts shall show distinctly the nature of such change, and shall be subject to all the conditions and provisions herein imposed

upon the original contracts, and be subject also to the approval of the attorney-general as hereinbefore provided; provided, that all changes in the contract exceeding five hundred dollars, shall be by contracts in writing, with full specifications and estimates, and shall become a part of the original contract, and shall be filed with the controller of state, with the original contract; and provided further, that the amount of such change in the contract, plans, descriptions, bills of materials, or specifications, shall not, in the aggregate, increase the cost of construction of said institution, asylum, building, or improvement, more than three per centum of the original contract price or cost.

Whole cost not to exceed amount authorized by law.

SEC. 6. That no contract or contracts shall be made for the labor or material herein provided for at a price in excess of the entire estimate thereof, in this act required to be made, and the entire contract or contracts shall not, including estimates of expenses for architects and otherwise, exceed in the aggregate the amount authorized by law for such institution, asylum, building, or other improvement, or such addition to, or alteration or improvement thereof, under the penalties of section ten of this act hereinafter provided.

Directors, etc., to estimate labor and materials, and amount due.

SEC. 7. At the time or times named in the contract or contracts made and filed with the controller of state, or which has been previously made and filed with him, in accordance with the provisions of this act, for payment to the person or persons with whom such contract or contracts had been made, it shall be and is hereby made the duty of the commissioners, directors, trustees, or other officer or officers, to whom is confided the duty of superintending the erection of such institution, asylum, building, or improvement, or adding to, altering, or improving the same, to make or cause to be made a full, accurate, and detailed estimate of the various kinds of labor performed and materials furnished under such contract or contracts, with the amount due for each kind of labor and materials, and the amount due in the aggregate, which estimate shall be based upon an actual measurement of the labor so performed and materials so furnished, which estimate shall, in all cases, give the amounts of the preceding estimate or estimates, and the amount of labor performed and materials furnished since the last estimate, which estimate or estimates so made, as in this act required, shall be recorded in a book for that purpose to be provided and kept, or caused to be kept, by the said commissioners, directors, trustees, or other officer or officers, and a certified copy thereof, addressed to the controller of state by the said commissioners, directors, trustees, or other officer or officers, or by such person as they may designate for that purpose, be delivered to the contractor or contractors entitled thereto; provided that upon all estimates of materials furnished and delivered, and not actually having entered into and become a part of said institution, building, or other improvement, there shall not be paid, until the same shall be incorporated into and become a part of said institution, building, or other improvement, exceeding fifty per centum of such estimated value.

Controller to compare estimate with contract.

SEC. 8. It shall be the duty of the controller of state, on the receipt of such estimate so certified and approved, to compare carefully the same with the contract or contracts under which labor was done or materials furnished, and if there had been any previous estimates, then with such estimates; and if, upon such comparison, he shall find such last-named estimate in all respects correct, he shall number the same, place it on file, and have a record thereof made, and give to the person or persons entitled thereto, taking his or their receipt therefor, a warrant on the treasurer of state for the amount shown

by such estimate or estimates to be due, less the amount of ten per centum thereon, which shall be retained as an additional security for the faithful performance of his or their contract or contracts, and shall be forfeited to the state in the event of a failure of such contractor or contractors to conform in good faith to the terms and conditions of such contract or contracts; but when the labor to be performed and materials furnished, under such contract or contracts, is performed and furnished, and a final estimate thereof made, the controller of state shall include in the warrant or warrants for the amount of such last estimate the percentage retained on former estimates.

SEC. 9. The treasurer of state shall pay the warrants issued by the controller of state, under and by virtue of the provisions of this act, placing the same on file, and keeping a register of the names of the person or persons to whom such warrants are paid.

Officer making fraudulent plans or estimates.

SEC. 10. Any commissioner, director, trustee, or other officer or person otherwise appointed, whose duty it is to superintend, in whole or in part, the erection of such institution, asylum, building, or improvement, or of adding to, altering, or the improvement thereof, or the making of the plans, descriptions, and specifications of the labor to be performed and materials to be furnished, as provided in this act, and the estimates of the cost thereof, or the estimates of the amount of labor done and materials furnished from time to time, under and in accordance with the terms and conditions of the contracts in this act authorized to be made, and the provisions of this act, who shall, in the performance of the duty herein imposed upon him or upon them, knowingly make incomplete or fraudulent plans, drawings, bills of materials, specifications of work, or estimates of the cost thereof, or permit the work in any other manner than is prescribed in such plans, descriptions, and specifications, or with materials inferior to that required by such bills of materials, to the injury of the state; or shall knowingly make false estimates of the labor done or materials furnished, either in the quantity or price thereof, to the injury of the state; or any contractor, or any agent of any contractor or contractors, who shall knowingly permit materials to be used or work to be done inferior to, or in violation of, the contract of such contractor or contractors, to the injury of the state, shall be deemed and held guilty of a felony, and, upon conviction thereof, shall be confined in the state prison for not less than one year nor more than five years, and be liable to the state for double the amount the state may have lost, or be liable to lose, by reason thereof.

Attorney-general to enforce contracts.

SEC. 11. It shall be the duty of the attorney-general to have charge of and direct all the proceedings necessary to enforce the contracts authorized by this act and the provisions of this act, against such person or persons as become liable to the penalties herein prescribed.

Officers to require diligence in contractor.

SEC. 12. Whenever, in the opinion of the commissioners, directors, trustees, or other officers charged with the duty of devising and superintending the erection, alteration, addition to, or improvement of any state institution, asylum, building, or other improvement under this act, or any law of this state, the work under any contract made in pursuance of this act, or any such law, is neglected by the contractor or contractors, or that the same is not prosecuted with the diligence and force specified, meant, or intended in and by the terms of the contract, it shall be lawful for such commissioners, directors, trustees, or other officers, to make a requisition upon such contractor or contractors for such additional specific force, or for such additional specific materials, to be brought

into the work under such contract, or to remove improper materials from the grounds, as in the judgment of such commissioners, directors, trustees, or other officers, said contract and its due and faithful fulfillment require; of which action of said board or other officers, due notice in writing, of not less than five days, shall be served upon such contractor, or his or their agent having charge of the work. And if such contractor or contractors fail to comply with such requisition within fifteen days, it shall be lawful for said commissioners, directors, trustees, or other officers, with the consent, in writing, of the governor, treasurer of state, and secretary of state, to employ upon such work the additional force, or supply the materials so specifically required as aforesaid, or such part of either, as they may deem proper, and to remove improper materials from the grounds; and it shall be the duty of such commissioners, directors, trustees, or other officers, to make separate estimates of all such additional force or materials so employed or supplied as aforesaid, and which, being certified to by said commissioners, directors, trustees, or other officers, shall be paid by the controller of state the same as if made out agreeably to section seven of this act, and the amount so paid shall be charged against said contractor or contractors, and deducted from his or their next, or any subsequent estimate; or the same, or any part thereof, not paid as aforesaid, may be recovered by action from such contractor or contractors, and their sureties.

Time to be fixed for completion of contract.

SEC. 13. In all contracts made under the provisions of this act, there shall be a provision in regard to the time when the whole, or any specified portion, of the work contemplated in said contract shall be completed, and also providing that for each and every day the same shall be delayed beyond such time or times so named, the said contractor or contractors shall forfeit and pay to the state a sum of money, to be fixed and determined in said contract, to be deducted from any payment or payments due, or to become due, to said contractor or contractors.

Applicable to former contracts.

SEC. 14. All contracts now made and not performed, for the erection, alteration, addition to, or improvement of, any state institution, asylum, building, or other improvement, shall, as far as practicable, be performed, completed and enforced and settled for under this act, or may, by the consent of the contracting parties, be made to conform to, and proceed under, the provisions of this act.

SEC. 15. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 16. This act shall take effect from and after its passage.

CHAPTER X.

HOURS OF LABOR.

3244. *Eight hours a day's work.*

SEC. 3244. Eight hours of labor constitute a day's work, unless it is otherwise expressly stipulated by the parties to a contract.

3245. *Same, on public works.*

SEC. 3245. Eight hours' labor constitute a legal day's work in all cases where the same is performed under the authority of any law of this state, or under the direction, control, or by the authority of any officer of this state acting in his official capacity, or under the direction, control, or by the authority, of any municipal corporation within this state, or of any officer thereof acting as such; and a stipulation to that effect must be made a part of all contracts to which the state or any municipal corporation therein is a party.

CHAPTER XI.

TIME.

3255. *Time, how computed.*

SEC. 3255. Time is computed according to the Gregorian or new style; and the first day of January in every year passed since seventeen hundred and fifty-two, or to come, must be reckoned as the first day of the year.

3256. *Leap year.*

SEC. 3256. The several years one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other future hundredth year, of which the year two thousand is the first, except only every fourth hundredth year, are not leap years, but common years of three hundred and sixty-five days; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the year two thousand, inclusive, and also every fourth year, except as above mentioned, which, by usage, in this state is considered a leap year, is a leap year consisting of three hundred and sixty-six days.

3257. *Year and its parts.*

SEC. 3257. The term "year" means a period of three hundred and sixty-five days; a half year, one hundred and eighty-two days; a quarter of a year, ninety-one days, and the added day of a leap year, and the day immediately preceding, if they occur in any such period, must be reckoned together as one day.

3258. *Week.*

SEC. 3258. A week consists of seven consecutive days.

3259. *Day.*

SEC. 3259. A day is the period of time between any midnight and the midnight following.

3260. *"Day-time" and "Night-time" defined.*

SEC. 3260. "Day-time" is the period of time between "sunrise" and "sunset," and "night-time" is the period of time between "sunset" and "sunrise."

CHAPTER XII.

MONEY OF ACCOUNT.

3272. *Money of account.*

SEC. 3272. The money of account of this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

3273. *Limitation on preceding section.*

SEC. 3273. The provisions of the preceding section do not vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars, or parts of dollars, in any suit thereupon.

3274. *Amount, how stated in judgments, etc.*

SEC. 3274. In judgments and executions the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions.

CHAPTER XIII.

AUCTIONS.

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ARTICLE I.

AUCTIONEERS.

3284. *Who may become auctioneers, and how.*

SEC. 3284. Any citizen of this state may become an auctioneer for the county

in which he resides, and is authorized to sell real and personal property at public auction, on giving a bond in accordance with the provisions of this article for the faithful performance of his duties, and on the payment of the license therefor.

3285. Bond, sureties, approval, and filing.

SEC. 3285. The bond must be conditioned to be paid to the people of the State of California, with one or more sureties, in the sum of five thousand dollars, and approved by the county judge of the county in which the auctioneer proposes to do business, and must be filed in the office of the county clerk of the county.

3286. Government goods are exempt.

SEC. 3286. No auctioneer's license is required for the selling of any goods at public sale belonging to the United States, or to this state, or for the sale of property by virtue of any process issued by any state or federal court.

3287. Original application, how classified.

SEC. 3287. Every original application for auctioneer's license must be accompanied with a verified statement of the amount of sales proposed to be made monthly, and the license charge must be for the first quarter classified thereby.

3288. Renewal of license.

SEC. 3288. Every auctioneer applying to the tax collector for a renewal of his license must accompany the application with a statement, under oath, setting forth that his average receipts per month on account of sales during the preceding quarter did not exceed the amount specified in the class of license for which he applies. The tax collector must provide blank forms of affidavit for that purpose, and administer the oath required to such applicants without charge.

3289. Renewal, for how long—Exceeding class by sales.

SEC. 3289. After the first quarter licenses may be issued for the class fixed for a term not exceeding one year, at the option of the auctioneer. No auctioneer must exceed the amount of sales of the class in which his license is fixed. For every violation of this section, in addition to the criminal penalty, the auctioneer forfeits two hundred and fifty dollars.

3290. Not to transfer license.

SEC. 3290. No auctioneer is permitted to transfer his license to any other person for any part of the time for which his license is issued; nor is any auctioneer permitted to use his license for the purpose of transacting an auction business in more than one store or specified place of business.

3291. Auctioneers ex officio.

SEC. 3291. In any city or town where there is no auctioneer, the sheriff or a constable thereof is ex officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex officio auctioneer he is liable on his official bond.

3292. Substitute, who may be, and when.

SEC. 3292. Every auctioneer in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a copartner or clerk to hold such auction in his name and behalf; such employee to take and file with the clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible. [*Amendment, approved March 30, 1874; Amendments 1873-4, 136; took effect from passage.*^(a)]

(a) The original section did not have the last sentence.

ARTICLE II.

REGULATIONS RESPECTING SALES.

3302. *Auctioneers in cities to designate their places of business.*

SEC. 3302. No auctioneer in any city of this state must have at one time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the clerk of the county in which such city is situated a writing signed by him designating such place, and naming therein the partners, if any, engaged with him in business.

3303. *To sell at no other place.*

SEC. 3303. No auctioneer must expose to sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have usually been sold in warehouses, or in the public streets, or on the wharves.

3304. *Power of city authorities.*

SEC. 3304. The common council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient.

3305. *Book for live stock.*

SEC. 3305. Every auctioneer who sells any animal of the horse kind, or any mules, must keep a book, in which he must register the name of each and every person bringing or offering any horse or mule to be sold, and the name of the person purchasing such horse or mule, together with the date of such sale, and a description of each horse or mule sold, together with the marks and brands. The book is a public record, subject to the inspection of any person desiring to inspect the same.

3306. *Other books.*

SEC. 3306. Each auctioneer must keep a book, in which he must enter all sales, showing the name of the owner of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book must at all times be open for the inspection of any person interested therein.

3307. *Advertisement of auction sales in San Francisco.*

SEC. 3307. Every auctioneer in the city of San Francisco must, under his own name, give previous notice in one or more of the public newspapers printed in that city of every auction sale made by him; and in case he is connected with any person or firm, his name must in all cases precede, separately and individually, the name of such person or the title of the firm.

3308. *Evening sales in San Francisco and Sacramento.*

SEC. 3308. All sales of goods by public auction in the cities of San Francisco and Sacramento must be made in the daytime, between sunrise and sunset, excepting:

1. Books, prints, or paintings;
2. Goods sold in the original package as imported, according to a printed catalogue, of which samples must have been opened and exposed to public inspection at least one day previous to the sale.

3309. *Commissions, and penalty for over charge.*

SEC. 3309. No auctioneer must demand or receive a higher compensation for his services than a commission of one per cent. on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, in addition to the criminal penalty, forfeits to the party aggrieved two hundred and fifty dollars, and must refund the excess of charge.

3310. *Quarterly report of sales.*

Sec. 3310. Every auctioneer must quarterly make to the county auditor a report, under oath, showing:

1. The aggregate amount of auction sales made by him for the preceding quarter, designating the months and the amount for each month;
2. The days of each month on which auction sales were made, and the character of property sold by him during each month;
3. The amount of all private sales made, and the day on which they were made;
4. A statement of any partner, clerk, or other employee connected with him in his business, and what sales, if any, have been conducted by them, and why; and
5. The particular place where his business is conducted.

ARTICLE III.**FRAUDS AND PENALTIES.****3322. *Penalty for not reporting, or reporting falsely.***

Sec. 3322. For every false report made, and for every neglect to make the report required in the preceding article, the auctioneer thereby forfeits the sum of two hundred and fifty dollars, to be recovered on his bond.

3323. *Penalties, how recovered, and for what.*

Sec. 3323. The penalties imposed by the provisions of this chapter, not otherwise appropriated, must be prosecuted for by the district attorney of the proper county, the moneys recovered to be paid to the county treasurer for the use of the general fund of the county.

3324. *Action on bond.*

Sec. 3324. Any one aggrieved or damaged by any act of an auctioneer in violation of or contrary to the provisions of this chapter, has an action against him and his bondsmen on his official bond therefor.

CHAPTER XIV.**FIRES AND FIREMEN.****3335. *Fire companies, how organized.***

Sec. 3335. Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing with the recorder of the county in which they are located a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every six months.

3336. *To elect officers and adopt and enforce by-laws.*

Sec. 3336. Every such fire company must choose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt by-laws and regulations, and impose penalties, not exceeding five dollars or expulsion for each offense.

3337. *Firemen exempt from military and jury duty.*

Sec. 3337. The officers and members of unpaid fire companies regularly organized and exempt firemen are not subject to military duty, except in case of war, invasion, or insurrection, nor are they subject to perform jury duty.

3338. *Exempt certificate, by and to whom issued.*

SEC. 3338. Every fireman who has served five years in an organized fire company in this state is an "exempt fireman," and must receive from the chief engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Either certificate entitles the holder to exemption from military and jury duty.

3339. *County clerk may issue exempt certificates, when.*

SEC. 3339. In lieu of issuing certificates to exempt firemen by the chief of the fire department, as provided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provisions being made therefor in the by-laws of the company, "exempt certificates" may be issued by the clerk of the county over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

3340. *Seal of department, who to use and keep.*

SEC. 3340. Every fire department regularly organized may adopt a department seal, having upon it the arms of the state, and the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the by-laws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the by-laws provide for the faithful performance of his duties.

3341. *Record of membership of fire department.*

SEC. 3341. The secretary of the fire department, or fire company, must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates. Every such certificate is prima facie evidence of the facts therein stated. [*Amendment, approved March 30, 1874; Amendments 1873-4, 43; took effect July 6, 1874; 437.* ^(a)]

3342. *Duties of chief of fire department.*

SEC. 3342. The chief of every fire department must inquire into the cause of every fire occurring in the city or town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and when directed by the proper authorities institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation must be fixed and paid by the city or town authorities.

3343. *Chief to attend fires and preserve property.*

SEC. 3343. Every chief of a fire department must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by the police or county judge.

3344. *Setting woods on fire.*

SEC. 3344. Every person negligently setting fire to his own woods, or negligently suffering any fire to extend beyond his own land, is liable in treble damages to the party injured.

(a) The original section had the word "primary" instead of "prima facie."

3345. *Extinguishing fire in woods.*

SEC. 3345. Whenever the woods are on fire any justice of the peace, constable, or road overseer of the township or district where the fire exists, may order as many of the inhabitants liable to road poll tax, residing in the vicinity, as may be deemed necessary, to repair to the place of the fire and assist in extinguishing or stopping it.

CHAPTER XV.**LICENSES.**

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ARTICLE I.**GENERAL PROVISIONS.****3356. *Licenses to be prepared and printed.***

SEC. 3356. Each county auditor must prepare and have printed blank licenses of all classes mentioned in this chapter for terms of three, six, and twelve months, and for such shorter terms as are herein authorized to be issued, with a blank receipt attached for the signature of the tax collector when sold.

3357. *Auditor to number, sign, and deliver.*

SEC. 3357. The county auditor must affix his official seal to, number, and sign all licenses, and from time to time deliver them to the tax collector in such quantity as may be required, taking his receipt therefor, and charge him therewith, giving in the entry the numbers, classes, and amount thereof.

3358. *Auditor to keep stumps and license account.*

SEC. 3358. The auditor must keep in his office the stumps of all licenses by him delivered to the tax collector, and a ledger in which he must keep the collector's account for all licenses delivered to him, sold, or returned unsold by him. A correct statement of the collector's license account must be certified to the county treasurer each month by the auditor.

3359. *When license to be procured.*

SEC. 3359. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the tax collector of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city, or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinances or orders of such city or town.

3360. *Suit against delinquent—Damages.*

SEC. 3360. Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the collector may direct suit in the name of the people of the State of California as plaintiff, to be brought for the recovery of the license tax; and in such case either the collector or attorney may make the necessary affidavit for and a writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the

plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant, and when collected five dollars thereof must be paid to the collector, and ten dollars to the attorney prosecuting the suit.

3361. *Tax collectors—Duties.*

SEC. 3361. Each tax collector must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require each person to state, under oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is president, secretary or managing agent, will do in the next succeeding three months; and thereupon, such person, agent, president, secretary or other officer, must procure a license from the tax collector for the term desired, and the class for which such party is liable to pay; and in all cases where an underestimate has been made by the party applying, the party making such underestimate, or the company he represented, are required to pay for a license for the next quarter double the sum otherwise required.

3362. *Proof on trials.*

SEC. 3362. Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs.

3363. *First Monday in each month settlements and payments to be made.*

SEC. 3363. On the first Monday in each month the collector must return to the auditor all licenses, unsold, and be credited therewith, and must, with the auditor, appear at the treasurer's office and pay into the county treasury, for the use of the county general fund, all moneys collected for licenses sold during the preceding month, take the treasurer's receipt therefor, and file duplicates thereof with the auditor. The auditor must credit the collector and charge the treasurer therewith.

3364. *Fees for issuance of licenses.*

SEC. 3364. For each license issued, the collector must collect a fee of one dollar, which must be paid into the salary fund of the county, unless the auditor and collector are paid by fees instead of salaries, in which case the dollar must be equally divided between them; provided, that in the county of Sierra the fee so collected shall belong to the collector. [*Amendment, approved March 24, 1874; Amendments 1873-4, 137; took effect from passage.*]^(a)

ARTICLE II.

CLASSIFICATION AND TAXES.

3376. *Classification and license tax.*

SEC. 3376. Auctioneers are divided into eight classes, and must obtain licenses from the tax collector as follows:

1. Those whose average monthly sales amount to one hundred thousand dollars and upwards constitute the first class, and must pay a license of four hundred dollars per quarter;
2. Those whose average monthly sales amount to seventy-five thousand

(a) The original section did not have the proviso. It was amended by act of March 30, 1874 (Amendments 1873-4, 43), by adding to the original the following clause:

"The license issued must be for a term designated by the person taking it, not to exceed twelve months,

and not less than the shortest term fixed in this chapter."

This amendment, though later in time, seems to have been superseded by the amendment in the text by virtue of section 117 of the amendatory act of March 30, 1874; Amendments 1873-4, 60. See post, 4457.

dollars, and less than one hundred thousand dollars, constitute the second class, and must pay a license tax of three hundred dollars per quarter;

3. Those whose average monthly sales amount to fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay a license tax of two hundred dollars per quarter;

4. Those whose average monthly sales amount to thirty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay a license tax of one hundred and twenty-five dollars per quarter;

5. Those whose average monthly sales amount to twenty thousand dollars, and less than thirty thousand dollars, constitute the fifth class, and must pay a license tax of one hundred dollars per quarter;

6. Those whose average monthly sales amount to ten thousand dollars, and less than twenty thousand dollars, constitute the sixth class, and must pay a license tax of sixty dollars per quarter;

7. Those whose average monthly sales amount to twenty-five hundred and less than ten thousand dollars constitute the seventh class, and must pay a license tax of twenty-five dollars per quarter;

8. Those whose average monthly sales are less than twenty-five hundred dollars constitute the eighth class, and must pay a license tax of seven dollars and a half per quarter.

[SEC. 3377 was repealed by act approved April 1, 1872, which, however, does not appear to be published in either the statutes or the codes. It is on file in the office of the secretary of state.]

3378. *Bridge, ferry, wharf, chute, or pier license.*

SEC. 3378. Licenses to take tolls on bridges, ferries, wharves, chutes, or piers are fixed annually by the boards of supervisors. The licenses therein provided for are issued by the county auditor, and must be obtained from the tax collector of the county.

3379. *Brokers, trust companies and others.*

SEC. 3379. Persons engaged in banking, loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons; or in buying or selling state, county, or city stocks, or other evidences of state, county, or city indebtedness; or stocks, or notes, bonds, or other evidences of indebtedness of incorporated companies; or in buying or selling gold dust, gold or silver bullion, or gold or silver coin, are divided into six classes, and must pay licenses as follows:

1. Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter and over, constitute the first class, and must pay a license of one hundred dollars per quarter;

2. Those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter, constitute the second class, and must pay a license of eighty dollars per quarter;

3. Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per quarter, constitute the third class, and must pay a license of forty dollars per quarter;

4. Those doing business to the amount of fifty thousand dollars and less than one hundred thousand dollars per quarter, constitute the fourth class, and must pay a license of twenty-five dollars per quarter;

5. Those doing business in any amount under fifty thousand dollars, and over five thousand dollars per quarter, constitute the fifth class, and must pay a license of fifteen dollars per quarter;

6. Those doing business in any amount under five thousand dollars per quarter, constitute the sixth class, and must pay a license of three dollars per quarter.

3380. Licenses.

SEC. 3380. Licenses must be obtained for the purposes hereinafter named, for which the tax collector must require payment as follows:

Billiards.

1. From each proprietor of a billiard table, not kept exclusively for family use, for each table, five dollars per quarter; and for a bowling alley, five dollars per quarter for each alley; but no license must be granted for a term less than three months.

Theatres.

2. Theatres are divided into two classes: those seating nine hundred and seventy-five or more, are of the first class; those seating less than nine hundred and seventy-five, are of the second class. One seat is twenty-two inches. License shall be granted to theatres and other places of amusement according to the following schedule: If for less than one month, first-class, five dollars per day; second-class, five dollars per day. If for one month, and less than three months, first-class, one hundred dollars per month; second-class, seventy-five dollars per month. If for three months, and less than one year, first-class, three hundred dollars per quarter; second-class, two hundred dollars per quarter. If for one year, first-class, six hundred dollars; second-class, four hundred dollars.

Menagerie.

3. For each exhibition for pay for a caravan or menagerie, or any collection of animals, circus, or other acrobatic performance, ten dollars; and for each show for pay of any figures, jugglers, necromancers, magicians, wire or rope dancing, sleight of hand exhibitions, five dollars each day.

Pawnbrokers.

4. From each pawnbroker, thirty dollars per quarter.

Intelligence offices.

5. From each keeper of all intelligence offices, fifteen dollars per quarter. [*Amendment, approved March 30, 1874; Amendments 1873-4, 44; took effect July 6, 1874.*^(a)]

3381. Retail liquor licenses.

SEC. 3381. Every person who sells spirituous, malt, or fermented liquors or wine, in less quantities than one quart, must obtain a license from the tax collector as prescribed in this chapter, and make therefor the following payment:

1. Those making sales to the amount of ten thousand dollars or more as a monthly average, constitute the first class, and must pay forty dollars per month;

2. Those making sales to the amount of five thousand dollars, and not exceeding ten thousand dollars as a monthly average, constitute the second class, and must pay twenty dollars per month;

3. And those making sales of less than five thousand dollars, constitute the third class, and must pay five dollars per month.

3382. Merchants and keepers of livery stables licenses.

SEC. 3382. Every person who, at a fixed place of business, sells any goods, wares, or merchandise, wines or distilled liquors, drugs or medicines, jewelry

(a) The original section differed in the second, third and fifth subdivisions. The second was as follows:

"2. From the manager or lessee of every theatre, five dollars per day, if granted for a less term than one month; if granted for one month, one hundred dollars; if for three months, two hundred dollars; and if for one year, six hundred dollars; and for each exhibition of serenaders, negro minstrels, opera, melodeon

performance, or other musical entertainment, dancing or ballet, the same pay for license as is herein provided for a theatre license."

The third, after "circus" had the word "equestrian."

The fifth read "of an intelligence office," and if not intended to be rendered nugatory was clearly not improved by substituting "of all intelligence offices."

or wares of precious metals, whether on commission or otherwise (except agricultural or vinicultural productions, or the productions of any stock, dairy or poultry farm of this state, when sold by the producer thereof, and except such as are sold by auctioneers at public sale under license), and all persons who keep horses or carriages for hire (except such as are used in the transportation of goods), must obtain from the tax collector of the county in which the business is transacted, and for each branch of such business, license, and pay quarterly therefor an amount of money to be determined by the class in which such person is placed by the tax collector; such business to be classified and regulated by the amount of the average monthly sales made or hiring done, and at the rates following:

1. Those who are estimated to make average monthly sales or hiring to the amount of one hundred thousand dollars or more, constitute the first class, and must pay fifty dollars per month;

2. Of seventy-five thousand dollars, and less than one hundred thousand dollars, constitute the second class, and must pay thirty-seven dollars and fifty cents per month;

3. Of fifty thousand dollars, and less than seventy-five thousand dollars, constitute the third class, and must pay twenty-five dollars per month;

4. Of forty thousand dollars, and less than fifty thousand dollars, constitute the fourth class, and must pay twenty dollars per month;

5. Of thirty thousand dollars, and less than forty thousand dollars, constitute the fifth class, and must pay fifteen dollars per month;

6. Of twenty thousand dollars, and less than thirty thousand dollars, constitute the sixth class, and must pay ten dollars per month;

7. Of ten thousand dollars, and less than twenty thousand dollars, constitute the seventh class, and must pay seven dollars and fifty cents per month;

8. Of five thousand dollars, and less than ten thousand dollars, constitute the eighth class, and must pay five dollars per month;

9. Of two thousand five hundred dollars, and less than five thousand dollars, constitute the ninth class, and must pay three dollars per month;

10. Of all amounts over twelve hundred and fifty dollars, and under two thousand five hundred dollars per month, constitute the tenth class, and must pay one dollar and fifty cents per month;

11. Of all amounts less than twelve hundred and fifty dollars per month constitute the eleventh class, and must pay one dollar per month. [*Amendment, approved March 10, 1874; Amendments 1873-4, 137; took effect immediately.*^(a)]

3383. *Exception in using liquors.*

Sic. 3383. The sale of liquors and wines by persons licensed under the preceding section must not be in less quantity than one quart measure. No license must be required of physicians, surgeons, apothecaries, or chemists, for any wines or spirituous liquors they may use in the preparation of medicines.

3384. *Peddlers' and hawkers' license.*

Sic. 3384. Every traveling merchant, hawker, or peddler who carries a pack and vends goods, wares, or merchandise of any kind other than the manufactures or productions of this state, must pay for a license five dollars per month; and every such traveling merchant, hawker, or peddler who uses a wagon, or one or more animals, for the purpose of vending such goods, wares, or merchandise of any kind, must pay for a license fifteen dollars per month; and every traveling merchant, hawker, or peddler who uses a trading boat or other

(a) The original section did not have the words "or the productions of any stock, dairy or poultry farm." Instead of subdivisions nine, ten and eleven, it had the following:

"9. Of all amounts under five thousand dollars, constitute the ninth class, and must pay three dollars per month."

water craft only, shall pay a merchant's license according to the provisions and classifications of section 3382 of this code. [*Amendment, approved March 20, 1876; Amendments 1875-6, 56; took effect from passage.*^(a)]

3385. Animals kept for propagation to be licensed.

SEC. 3385. Every person who keeps a stallion, jack, or bull, and who permits the same to be used for the purpose of propagation for hire, must annually obtain a license therefor from the tax collector, and pay therefor as follows:

1. Horses that are hired for the purpose of propagation, by the season, at one hundred dollars or more, constitute the first class, and require a license of seventy-five dollars;
2. At seventy-five dollars, and less than one hundred dollars, constitute the second class, and require a license of sixty dollars;
3. At fifty dollars, and less than seventy-five dollars, constitute the third class, and require a license of forty dollars;
4. At thirty dollars and less than fifty dollars, constitute the fourth class, and require a license of twenty-five dollars;
5. At fifteen dollars and less than thirty dollars, constitute the fifth class, and require a license of fifteen dollars;
6. All at less than fifteen dollars, constitute the sixth class, and require a license of ten dollars;
7. For each jack, ten dollars;
8. For each bull, ten dollars.

A license so obtained from the tax collector, under the provisions of this act, shall entitle the holder thereof [to] the right to go into any county of this state for the purposes of propagation without further license or expense. [*Amendment, approved March 7, 1876; Amendments 1875-6, 56; took effect from passage.*^(b)]

3386. Certain exhibitions, etc., exempted.

SEC. 3386. The provisions of subdivisions 2 and 3 of section 3380 do not apply to exhibitions or entertainments given for the benefit of churches, schools, or other charitable entertainments, by any amateur dramatic association or literary society of the town or district in which such exhibition or entertainment is given.

3387. Present incumbents must collect licenses.

SEC. 3387. In every county in this state where any officer other than the tax collector is charged with the collection of license taxes, such officer must, until after the expiration of the term of the present incumbent, discharge the duties cast upon the tax collector under the provisions of Articles I and II of this chapter.

An Act to facilitate and increase the collection of state and county and municipal licenses in the city and county of San Francisco.

Approved March 30, 1872; 1871-2, 736.

Penalty for transacting business without a license in San Francisco.

SECTION 1. If any person or persons, whether as principal or principals, agent or agents, clerk or clerks, employee or employees, or any firm or any member of any firm or corporation, shall be engaged in carrying on, pursuing, or transacting, within the limits of the city and county of San Francisco, any business, trade, or profession, occupation or employment, which now is or shall hereafter

(a) The original section after the word "wagon" had the words "boat or other water craft," and did not have the last clause commencing with the words "and every traveling merchant, hawker or peddler who uses a trading boat."

(b) The original section had only three subdivisions, which were as follows: "1. For each stallion, fifty dollars; 2. For each jack, ten dollars; 3. For each bull, ten dollars."

be by law required to be licensed, without having first obtained and procured the license therefor so required by the laws of this state, or by the lawful orders of the board of supervisors of said city and county, or shall, after five days' notice in writing, refuse, neglect, omit, or fail to comply with any requirement or requirements, provision or provisions of the laws of this state or orders of the said board of supervisors requiring such person or persons, firm or corporation to procure a license, he, she, or they, or either of them, as the case may be, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than one hundred dollars, or by imprisonment for a period not exceeding thirty days, in case the fine is not paid.

Powers and duties of license collectors.

SEC. 2. The collector of licenses, chief deputy collector of licenses, and assistant deputy collectors of licenses of said city and county are hereby authorized, empowered, and required to collect all state and county licenses provided for and required by law to be collected within the limits of said city and county, in addition to the municipal licenses now required to be collected or which shall hereafter be required to be collected by them or either of them; and it shall be the duty of said collector of licenses, deputy collector of licenses, and assistant collectors of licenses to attend to the collection of licenses, and examine all places of business and persons liable to pay licenses, and to see that licenses are taken out and paid for. They shall each have and exercise, in the performance of their official duties, the same powers as police officers in serving process or summons and in making arrests; also, shall each have and exercise the power to administer such oaths and affirmations as shall be necessary in the discharge and exercise of their official duties; and they and each of them are hereby empowered to enter any place of business for which a license by law is provided and required, free of charge, at their pleasure, and to demand the exhibition of any license for the current time, from any person, or firm, or corporation engaged or employed in the transaction of any business for which a license is by law rendered necessary; and if such person, or firm, or corporation, or either of them, shall be unable, or refuse, or neglect, or fail to then and there exhibit such license, he, she, or they, as the case may be, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished as provided by section one of this act for punishment upon conviction of a misdemeanor.

Ordinances—City auditor.

SEC. 3. The board of supervisors of the city and county of San Francisco shall have power, by ordinance, to license and regulate all such callings, trades and employments as the public good may require to be licensed and regulated, and as are not prohibited by law, and shall have power to make all needful rules and regulations to govern the official conduct and duties of the collector of licenses, deputy collector of licenses and the assistant collectors of licenses, who shall each hold office during the pleasure of the power appointing them (and who shall pursue no other calling or business), and to alter and amend the same from time to time in such manner as they may deem proper and for the public good, and to fix the amounts of the bonds to be required from the collector of licenses and deputy collector of licenses and assistant collectors of licenses. The auditor of said city and county is hereby authorized and required to deliver, from time to time, to the collector of licenses, as many of such municipal licenses as may be required; also, to deliver from time to time to said collector of licenses for collection, such state and county licenses as may be required and such as he shall have received from the controller of the state, and to sign the same and charge them to the collector of licenses receiving them, specifying in

the charge the amounts thereof named in such licenses respectively, and the class of licenses, taking receipts therefor; and said collector shall proceed to collect the same, signing the same in lieu of the county treasurer; and he shall daily pay to the treasurer of the said city and county all moneys so collected for licenses sold, or by him received as fees; and shall, under oath, at least once in each calendar month, and oftener when required so to do by the auditor, make to the auditor a report of all such licenses sold and on hand and of all amounts so paid to the county treasurer in the same manner and upon the same conditions as by law the county treasurer heretofore has been required to make return thereof to the county auditor, and shall at such time exhibit to the auditor all unsold licenses in his hands and the treasurer's receipts for all moneys paid into the treasury; and all licenses so signed by the license collector or deputy license collector shall be as valid as if signed by the county treasurer. All fees so paid to him shall be placed to the credit of the special fee fund by the said treasurer.

Appointments and salaries.

SEC. 4. It is hereby made the duty of the mayor, the auditor and the treasurer of said city and county, and they are hereby authorized and empowered to appoint, subject to confirmation by the board of supervisors of said city and county, one person as collector of licenses for the city and county of San Francisco, who shall receive a monthly salary of two hundred dollars, payable monthly; and the said collector of licenses is hereby authorized and empowered to appoint one deputy collector of licenses, who shall be paid a monthly salary of one hundred and fifty dollars, payable monthly, and three assistant collectors of licenses, who shall be paid each a monthly salary of one hundred and twenty-five dollars, payable monthly. Such license collector and deputies shall hold office during the pleasure of the board of supervisors. All salaries herein provided for shall be paid from the general fund in the same manner as the salaries of other city and county officers are paid. The assistant collectors of licenses and the deputy collector of licenses shall, under the direction and instructions of the collector of licenses, observing the form and rules and regulations prescribed by said collector and board of supervisors, make to the said collector daily reports of duty performed and daily payments of money received for licenses and fees; and at the close of each month, and oftener when required by the collector of licenses, each shall make oath to the auditor that he has so paid over to the collector of licenses all such moneys, and a failure so to do shall be a cause for removal from office.

Revoking licenses.

SEC. 5. The police commissioners of the city and county of San Francisco are hereby authorized and empowered to revoke any licenses provided to be collected under the provisions of this act upon the conviction in the police judge's court of any person of disorderly or improper conduct, or any offense upon the premises of any person holding a license, or upon the conviction of the person holding said license of any offense which in the judgment of said commissioners ought to disqualify such person from holding such license.

Duty of county treasurer.

SEC. 6. It shall be the duty of the county treasurer to deliver to the collector of licenses, immediately upon this act taking effect, all papers, books, materials, and other property appertaining and belonging to the license department. And all acts or parts of acts requiring the county treasurer to collect licenses in the city and county of San Francisco, and all other acts or parts of acts, so far as they conflict with this act, are hereby repealed; provided, that nothing in this act contained shall curtail the clerical force in the office of the treasurer of

the city and county of San Francisco during the term of office of the present incumbent.

SEC. 7. This act shall take effect and be in force on and after the twentieth day subsequent to its passage.

TITLE VIII.

Property of the State.

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CHAPTER I

THE PUBLIC LANDS.

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ARTICLE I.

GENERAL PROVISIONS RESPECTING THE PUBLIC LANDS.

3395. *Register to keep certain accounts and records.*

SEC. 3395. The register of the state land office must keep separate accounts and records in relation to each class of lands to which the state is entitled, which must show:

1. The number of the survey or location, and the date of the approval;
2. The name of the locator, the description of the lands by legal subdivisions, the price per acre at which they are sold, the amount paid, the date of payment, the number and date of the certificate of purchase;
3. The date of the patent, when it has been issued.

3396. *Must keep plats, and note locations thereon.*

SEC. 3396. He must also keep plats of such lands, upon which all approved locations and surveys must be designated by their numbers.

3397. *Must note on plats the issuing of certificates or patents.*

SEC. 3397. When certificates of purchase or patents are issued, the fact must be noted on the plats.

3398. *Surveyor-general to be state locating agent.*

SEC. 3398. The surveyor-general is the general agent of the state for the location in the United States land offices of the unsold portion of five hundred thousand acres of land granted to the state for school purposes, and the sixteenth and thirty-sixth sections granted for the use of public schools, and lands in lieu thereof.

[Sees. 3399, 3400, 3401, 3402, 3403 and 3404^(a) were repealed by act ap-

(a) Repealed sections:
SEC. 3399. The state must be represented before the United States land department at Washington by an agent appointed by the surveyor-general.
SEC. 3400. The agent must be a citizen of this state,

and an attorney-at-law, and must establish and keep an office in Washington.

SEC. 3401. He must:

1. Procure from the United States land offices in this

proved January 19, 1874; Amendments 1873-4, 139. The repeal was contained in the first section of said act. There were two other sections as follows:]

Maps, documents, and papers.

SEC. 2. The person who has been acting as land agent, under the sections hereby repealed, is hereby ordered and directed to return to the surveyor-general of this state all maps, documents, and papers, now in his possession, or under his control, touching the lands of this state, furnished him by the officers of this state or of the United States, at his earliest convenience.

SEC. 3. This act shall be in force from and after its passage.

3405. *Surveyor-general to keep certain records.*

SEC. 3405. The surveyor-general must provide the necessary record-book, and cause all lists or patents for lands from the United States to be recorded therein.

3406. *Duty of surveyor-general on application for purchase of lands.*

SEC. 3406. The surveyor-general must, whenever application is made to him for any portion of the lands mentioned in section 3398, communicate with the United States land office, and ask that the lands described in the application be accepted in part satisfaction of the grant under which it is sought to be located.

3407. *Copy of U. S. register's approval.*

SEC. 3407. When the acceptance of the register of the United States land office is obtained, he must give to the party applying a copy of his approval.

3408. [SEC. 3408 was repealed by act of April 3, 1876; Amendments 1875-6, 57; took effect from passage.^(a)]

3409. *Surveyor-general to obtain statement as to condition of school sections.*

SEC. 3409. The surveyor-general must, after the survey of any township by the United States surveyor-general, obtain from the United States land office a statement, showing whether or not the sixteenth and thirty-sixth sections therein belong to the state.

3410. *Registers and receivers, how compensated for services rendered state.*

SEC. 3410. The registers and receivers of the United States land offices must present their accounts for services rendered the state to the surveyor-general, who, if he finds the same correct, according to fees allowed registers and receivers by act of congress, or by the department of the interior, must certify the same to the state board of examiners, who must audit and allow such accounts, and they must be paid out of the general fund.

3411. *Surveyor-general to represent state in contests relating to lands.*

SEC. 3411. The surveyor-general must represent the state in all contests between it and the United States in relation to public lands.

state abstracts of all lands applied for by the state, and cause the same to be listed to the state;

2. Act as attorney for the state before the land department at Washington;

3. Perform such other duties relative to the public lands and the interest of the state therein as may be required of him by the register or surveyor-general.

SEC. 3402. He receives from the state, as compensation for his services, two and one half cents per acre for all lands procured by him to be listed to it.

SEC. 3403. On the first Monday of each month the surveyor-general must certify to the board of examiners the number of acres for which United States lists have been filed in his office during the month next preceding, together with a statement of the amount due the agent upon the lands so listed, and if found to be correct, the board must approve the account and certify it to the controller of state, who must draw his warrant in favor of the agent for the amount thereof, and the state treasurer must pay the same out of the general fund.

SEC. 3404. Each purchaser of land from the state, upon receiving a patent for land, must pay to the register two and one half cents per acre therefor, which must be paid into the general fund of the state.

(a) Repealed section:

SEC. 3408. Where townships have not been subdivided, but township and other lines have been established so as to show that a tract of land is included in any thirty-sixth section, and the party applying for the same makes affidavit that there is no claim to the same other than his own, and that it is not occupied by any settler, the surveyor-general may approve such location without the acceptance of the register of the United States land office, and the register of the state land office may issue a certificate of purchase therefor. But no patent is issued therefor until the location is approved by the United States, nor is the state responsible in damages if the land is not subject to location.

3412. *Place of taking testimony to be fixed.*

SEC. 3412. When he desires to take testimony under the provisions of the act of congress to quiet land titles in California, passed July, eighteen hundred and sixty-six, he must request the United States surveyor-general to fix a place convenient of access by the witnesses, and the time for taking such testimony.

3413. *May require attorney-general to attend.*

SEC. 3413. He may require the attorney-general to attend and represent the state at the taking of such testimony; and the traveling expenses of each are a charge against the state. All claims for traveling expenses must be audited and allowed by the board of examiners, and paid out of the general fund. But not more than fifteen hundred dollars must be allowed in any one year for such expenses.

3414. *Contest as to approval of surveys, etc., how disposed of.*

SEC. 3414. When a contest arises concerning the approval of a survey or location before the surveyor-general, or concerning a certificate of purchase or other evidence of title before the register, the officer before whom the contest is made may, when the question involved is as to the survey, or one purely of fact, or whether the land applied for is a part of the swamp or overflowed lands of the state, or whether it is included within a confirmed grant, the lines of which have been run by authority of law, proceed to hear and determine the same; but when, in the judgment of the officer, a question of law is involved, or when either party demands a trial in the courts of the state, he must make an order referring the contest to the district court of the county in which the land is situated, and must enter such order in a record-book in his office.

3415. *Action.*

SEC. 3415. After such order is made either party may bring an action in the district court of the county in which the land in question is situated to determine the conflict, and the production of a certified copy of the entry, made by either the surveyor-general or the register, gives the court full and complete jurisdiction to hear and determine the action.

3416. *Effect of judgment.*

SEC. 3416. Upon filing with the surveyor-general or register, as the case may be, a copy of the final judgment of the court, that officer must approve the survey or location, or issue the certificate of purchase or other evidence of title in accordance with such judgment.

3417. *Limitations.*

SEC. 3417. Unless the party contestant commences his action within sixty days after the order of reference is made, his rights in the premises and under his application cease.

[Sees. 3418, 3419, 3420, and 3421 ^(a) were repealed by act approved March 28, 1874; Amendments 1873-4, 141; took effect immediately.]

(a) Repealed sections:

SEC. 3418. Each county surveyor, upon receiving an application for any survey required by any of the provisions of this title, must indorse the date of the receipt thereon, and note the same in a book kept in his office in the regular order in which it is received, giving the name and address of the applicant, and the description of the land by legal subdivisions.

SEC. 3419. He must, within thirty days after receiving such application if the lands are subject to sale, complete the survey plat and field notes, and record them in a book kept in his office, and forward duplicate copies thereof, together with a copy of the application, to the surveyor-general for approval, who must examine, and if found correct, return the same with his approval. The county surveyor must, upon the

receipt of an approved survey, record the approval; he must mark all approved surveys upon the maps of his office; and all his books and maps are open to public inspection.

SEC. 3420. If any county surveyor refuses or neglects to make any survey within the time prescribed by law, the surveyor-general may within thirty days after the expiration of such time appoint some person to make the same; and the survey so made, if made within thirty days after such appointment, must be filed and recorded in the surveyor-general's office, and is as valid as if made by the county surveyor.

SEC. 3421. All surveys must be made according to the instructions of the surveyor-general, and must conform as near as practicable to the lines of the public surveys.

3422. *County treasurer to report to register.*

SEC. 3422. Upon the first day of every month the county treasurer must make a report to the register of all moneys received for land during the preceding month, showing the number of the location or survey, the name of the purchaser, and the amount paid since the date of his last report, whether as principal or interest, which amounts must be entered in the columns belonging to the particular class of land upon which each payment has been made. The payment of the fee for the certificate of purchase must also be entered in the proper column, and the treasurer must then send the report to the auditor, who must compare the items with the account of the treasurer; and if the same agrees with his entries, countersign the report and return it to the treasurer.

3423. *Duty of register on receipt of report.*

SEC. 3423. These reports must be forwarded to the register at once, and upon receipt thereof the register must enter the payment so reported to the credit of the purchaser in the books of his office. He must notify the county treasurer of the receipt of his report, and if it is not correct, return it for correction.

3424. *Quarterly reports of the county treasurers.*

SEC. 3424. At the end of each quarter the county treasurer must report to the controller of state the sum which has been received during the quarter upon each class of land; which report must be referred to the register for examination and comparison with the books of his office.

3425. *Treasurers to pay over moneys received for lands.*

SEC. 3425. When the register certifies to the correctness of the report it must be returned to the controller, who must thereupon make his settlement with the county treasurer, who must pay over to the treasurer of state all moneys, controller's warrants, or other evidences of state indebtedness which he may have received in payment for such lands, except as provided in the next section.

3426. *County treasurers to retain moneys received for swamp lands.*

SEC. 3426. The county treasurer must retain all moneys arising from the sale of swamp and overflowed lands, and place the same to the credit of a fund known as the "Swamp Land Fund" of the county.

3427. *Interest, how computed and when payable.*

SEC. 3427. The county treasurer must compute interest on all sales from the date of the approval of the survey, or the date of the certificate of location, to the first of January following such date; or if for lands already purchased, then up to the first of January following the day upon which the interest falls due; after which time all payments of principal or interest fall due on the first day of January.

3428. *Compensation of county treasurer and auditor.*

SEC. 3428. The county treasurer is entitled to retain one per cent. of all moneys paid him for lands under the provisions of this article, and the auditor is entitled to one per cent. on amounts certified to by him as provided in section 3492, which he must receive from the treasurer, and his receipt therefor is a voucher for the controller of state in his settlement with such treasurer. When the auditor or treasurer receives a salary as auditor or treasurer, the percentage must be paid into the county treasury.

3429. *Surveyor-general and register to issue instructions and prepare printed forms.*

SEC. 3429. The surveyor-general and register must issue all instructions, and prepare and have printed all blank forms necessary to carry into operation the provisions of this chapter.

An Act for the relief of purchasers of state lands.

Approved March 27, 1872; 1871-2, 587.

Purchase of land from state, when title vested.

SECTION 1. When application has been made to purchase lands from this state and payment made to the treasurer of the proper county for the same, in whole or in part, and a certificate of purchase or patent has been issued to the applicant, the title of the state to said lands is hereby vested in said applicant, or his assigns, upon his making full payment therefor; provided, that no other application has been made for the purchase of the same lands prior to the issuance of said certificate of purchase; provided further, that this act shall not apply to school lands except to the amount of three hundred and twenty acres to any one purchaser.

Patent to grantee under sheriff's deed.

SEC. 2. When part payment only has been made for lands sold by this state and certificates of purchase issued for the same, and said lands have been subsequently sold under execution and a sheriff's deed issued therefor, the register of the state land office is hereby directed to issue to the grantee named in said deed or to his assigns a patent for said lands, upon his producing and surrendering said sheriff's deed and assignment, if any there be, and making full payment to the state for said lands.

Restitution of purchase-money, when.

SEC. 3. Whenever the state has issued a certificate of purchase for any land sold as swamp and overflowed, and the United States has sold and issued a patent for the same land, and the title of the United States is held and owned by the purchaser from the state or his assigns, or where the land so purchased from the state shall prove not to have been its property, the amount paid to the state for such land shall be refunded to such purchaser or his assigns, and the board of supervisors of the county in which the land is situated shall draw a warrant on the treasurer of the county for such amount, and the said treasurer shall pay the same out of moneys in the swamp land fund of the county credited to such purchaser.

Act not to apply to certain lands.

SEC. 4. The provisions of this act shall not apply to any lands within the county of San Diego, or within five miles of the city and county of San Francisco, or within five miles of the city of Oakland, or within one and a half miles of the state prison at San Quentin.

SEC. 5. This act shall take effect and be in force from and after its passage.

An Act to legalize applications heretofore made for the purchase of lands belonging to this state, and to confirm the title of the purchasers under such applications.

Approved March 27, 1872; 1871-2, 622.

Applications for certain lands legalized.

SECTION 1. All applications heretofore made for the purchase of lands belonging to this state, under the provisions of any act authorizing the sale of state lands, shall be good and valid, although the land described in such application and affidavit may be styled salt marsh and tide land, when, in fact, it is swamp and overflowed land; or may be styled swamp and overflowed land, when, in fact, it is salt marsh and tide land; or may be styled swamp and overflowed and salt marsh and tide land, when, in fact, it may be either. And the application first made shall have the preference by whatever style it may describe the land; provided, the same be in all other respects substantially conformable to law.

Certain patents declared valid.

SEC. 2. In all cases where patents have been or may hereafter be issued upon

any such application or affidavits as described in section one of this act for any such land, the same shall be deemed and held to convey the legal title to the land in such patent or patents described to the purchaser therein mentioned, by whatever style such land may be designated in such patent; and the State of California does hereby grant to the purchasers named in such patents, or their assigns or grantees, in case the title has been transferred, all its rights, title, and interest in and to the lands in such patents described.

Act not to apply to certain lands.

SEC. 3. The provisions of this act shall not be construed to recognize, confirm, or validate any title to any lands lying within five miles of the city and county of San Francisco, or of the city of Oakland, or within one and a half miles of the state prison at San Quentin.

SEC. 4. This act shall take effect and be in force from and after its passage.

ARTICLE II.

SWAMP AND OVERFLOWED, SALT MARSH, AND TIDE LANDS.

3440. *Swamp lands, etc.; price and manner of payment.*

SEC. 3440. The swamp and overflowed, salt marsh, and tide lands belonging to the state must be sold at the rate of one dollar per acre, in gold coin, payable, twenty per cent. of the principal within fifty days from the date of the approval of the survey by the surveyor-general; and the balance, bearing interest at the rate of ten per cent. per annum, payable in advance, is due and payable one year after the passage of any act of the legislature requiring such payment, or before, if desired by the purchasers. Bonds or warrants of districts having an outstanding indebtedness are receivable in payment for lands in such district at par.

3441. *Application not to be approved until land segregated.*

SEC. 3441. The surveyor-general of the state must not approve any application, nor must the register issue evidence of title, for swamp and overflowed land, until six months after the same has been segregated by authority of the United States. [*Amendment, approved March 28, 1874; Amendments 1873-4, 141; took effect immediately.*^(a)]

3442. *Settlers preferred purchasers for ninety days.*

SEC. 3442. Settlers upon swamp and overflowed lands belonging to the state who occupy the same for farming or grazing purposes, and whose occupation is evidenced by actual inclosure, or by ditches or monuments showing the actual extent thereof, are preferred purchasers for such lands for six months after segregation.

3443. *Application for purchase of swamp, etc., land.*

SEC. 3443. Any person desiring to purchase swamp and overflowed or tide lands above low tide, must make an affidavit and file the same in the office of the surveyor-general of the state, that he is a citizen of the United States, or has filed his intention to become so, a resident of the state, of lawful age; that he desires to purchase lands (describing them) under the law providing for the sale of swamp, and overflowed, and tide lands; that he does not know of any valid claim to the same, other than his own, and if the land is swamp and overflowed, that he knows the land applied for, and the exterior bounds thereof; and knows of his own knowledge that there are no settlers thereon, or, if there are, that the land has been segregated more than six months by authority of

^(a) The original section had the words "survey of" instead of "application," and before "the United States" it had the words "this state or."

the United States, and that the land which he now owns (swamp and overflowed), together with that sought to be purchased, does not exceed six hundred and forty acres. [*Amendment, approved March 28, 1874; Amendments 1873-4, 140; took effect immediately.*]^(a)

An Act for the protection of settlers on public lands claimed by the state.

Approved March 10, 1874; 1873-4, 327.

No claim against bona fide settlers.

SECTION 1. From and after the passage of this act, no claim shall be made by the state to any land as swamp or overflowed, nor shall the same be segregated by authority of the state, for which pre-emption or homestead patents have been issued by the United States, or upon which there are settlers, occupying the land in good faith, who have filed their pre-emption or homestead declaratory statement; nor shall the register of the state land office receive any application for swamp or overflowed land; unless the application be accompanied by a certificate from the register of the United States land office for the district in which the land is situated, that there is no pre-emption or homestead filing upon the land sought to be purchased.

SEC. 2. This act shall take effect and be in force from and after its passage.

3444. *If made by female, what.*

SEC. 3444. If the applicant is a female, such affidavit must also show that she is entitled to purchase real estate in her own name.

3445. *Application, to whom to be made.*

SEC. 3445. Any person desiring to purchase lands as provided in section 3443 of this code, which have been segregated by authority of the United States, but which have not been sectionized by the same authority, must apply to the surveyor of the county in which the land is situated to have the land which he desires to purchase surveyed, and a certificate of such survey must be attached to the affidavit required for the purchase of lands, as provided in said section. All surveys required of county surveyors by the provisions of this section must conform as nearly as practicable to the system adopted by the United States for the survey of the public lands. [*Amendment, approved March 28, 1874; Amendments 1873-4, 141; took effect immediately.*]^(b)

3446. *Petition for formation of reclamation district.*

SEC. 3446. Whenever the holders of title or evidence of title representing one half or more of any body of swamp and overflowed, salt marsh, or tide lands, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the board of supervisors of the county in which the lands or the greater part thereof are situated, at a regular meeting of the board, a petition, setting forth that they propose to form a district for the reclamation of the same, a description of the lands by legal subdivisions or other boundaries, the county in which they are situated, the number of acres in the proposed district, and in each tract, with the names (if known) of the owners thereof, and designating as unsold any lands not reduced to private ownership. [*Amendment, approved March 30, 1874; Amendments 1873-4, 45; took effect July 6, 1874.*]^(c)

(a) Original section:

SEC. 3443. Any person desiring to purchase swamp and overflowed or tide lands above low tide, must make affidavit that he is a citizen of the United States or has filed his intention to become so, a resident of the state, of lawful age, that he desires to purchase lands (describing them) under the law providing for the sale of swamp and overflowed and tide lands, that he does not know of any valid claim to the same other than his own, and, if the land is swamp and overflowed, that there are no settlers thereon, or if they are, that the land has been segregated more than six months.

(b) Original section:

SEC. 3445. The affidavit must be filed in the office of the surveyor of the county in which the land, or the greater portion thereof, is situated; and he must, except when surveys have already been made, then make a survey of the land.

(c) Original section:

SEC. 3446. Whenever the holders of evidence of title representing one half or more of any body of swamp and overflowed, salt marsh and tide lands, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the board of supervisors of

3447. Affidavit and publication.

SEC. 3447. The petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or, if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of publication must be filed with such petition.

An Act relative to the powers of the boards of supervisors of the counties of Yolo and Solano.

Approved March 25, 1874; 1873-4, 602.

Powers of supervisors in Yolo and Solano counties.

SECTION 1. The boards of supervisors, respectively, of the counties of Yolo and Solano, shall have power to approve any petition presented pursuant to sections thirty-four hundred and forty-six and thirty-four hundred and forty-seven of the Political Code, whether the lands described in the petition form a part of another district or not.

Liability.

SEC. 2. The district so formed shall be liable for its proportion of any outstanding indebtedness against any swamp land district from which new district is taken.

Code.

SEC. 3. Such new district shall proceed in its organization and acts of reclamation according to the provisions of the Political Code.

SEC. 4. This act shall take effect immediately.

3448. When the district is situated partly in different counties.

SEC. 3448. When a district is situated partly in different counties the trustees must, after the petition has been granted, forward a copy thereof to the clerk of the board of supervisors of each of the counties in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district, unless with the consent of the trustees thereof.

3449. Proceedings on appeal of petition.

SEC. 3449. If the board of supervisors find, on the hearing of the petition, that its statements are correct, they must make an order approving the same. If it be shown that any land has been improperly included in or excepted from the proposed district, they must reform the district in such respects in their order. The order of approval must be indorsed on or attached to the petition, and be signed by the president and attested by the clerk of the board. [*Amendment, approved March 30, 1874; Amendments 1873-4, 45; took effect July 6, 1874.*]^(a)

3450. Petition, when to be recorded.

SEC. 3450. The petition must then be recorded by the county recorder in a book kept for the purpose of recording papers relating to reclamations, and a certified copy thereof forwarded to the register.

3451. Duty of register on receipt of copy.

SEC. 3451. The register must thereupon forward to the county treasurer a statement showing the names of purchasers of land in the district, who have

the county in which the lands, or the greater portion thereof, are situated, at a regular meeting of the board, a petition setting forth that they desire to adopt measures to reclaim the same, the description of the lands by legal subdivisions, the quantity sold, and the quantity remaining unsold, the number of acres in the whole district, and the number of acres in each tract sold, with the names (if known) of the owners thereof.

(a) Original section:

SEC. 3449. If the board of supervisors find upon the hearing of the petition that the statements are correct, and that no land is improperly included in or excepted from the district, they must note their approval on the petition, which approval must be signed by the president and attested by the clerk.

paid in full therefor. [*Amendment, approved March 30, 1874; Amendments 1873-4, 46; took effect July 6, 1874.*^(a)]

3452. *District by-laws and trustees.*

Sic. 3452. After the approval of the petition, the petitioners, or a majority of them, may make by-laws for the management of the district, and must elect three persons owning land in the district, to act as a board of trustees thereof, who shall keep their office in the district or as near as practicable for the transaction of all business pertaining to the reclamation of the district, and their books and papers shall be opened to inspection by any one person interested at all times. [*Amendment, approved March 30, 1874; Amendments 1873-4, 46; took effect July 6, 1874.*^(b)]

3453. *By-laws must be signed and recorded.*

Sic. 3453. The by-laws thus adopted must be signed by the holders of certificates of purchase or patents representing at least one half of the land so to be reclaimed or benefited, and be recorded by the county recorder in the same book and immediately following the petition.

3454. *Powers of trustees.*

Sic. 3454. The board thus formed have power to elect one of their number president thereof, and to employ engineers to survey, plan, locate, and estimate the cost of the work necessary for reclamation, and the land needed for right of way, including drains, canals, sluices, water gates, embankments, and material for construction, and to construct, maintain, and keep in repair all works necessary to the object in view.

3455. *Board of trustees to report plans, etc.*

Sic. 3455. The board of trustees must report to the board of supervisors of the county, or, if the district is in more than one county, then to the board of supervisors in each county in which the district is situated, the plans of the work and estimates of the cost, together with estimates of the incidental expenses of superintendence, repairs, etc.

3456. *Commissioners to assess charges for reclamation purposes in coin.*

Sic. 3456. The board by which the district was formed must appoint three commissioners, disinterested persons, resident of the county in which the district or some part thereof is situated, who must view and assess upon the lands situated within the district a charge proportionate to the whole expense and to the benefits which will result from such works, and estimated in gold and silver coin of the United States. The same must be collected and paid into the county treasury as hereinafter provided, and be placed by the treasurer to the credit of the district, and paid out for the work of reclamation upon the warrants of the trustees, approved by the board of supervisors of the county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 46; took effect July 6, 1874.*^(c)]

3457. *Warrants, how presented.*

Sic. 3457. The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and if they are not paid on presentation, such indorsement must be made thereon, and they must be registered and bear interest from date of presentation, pro-

(a) The original section had the words "all owners" instead of "purchasers," and "for their lands" instead of "therefor."

(b) Original section:

Sic. 3452. After the approval of the petition, the petitioners may make such by-laws as they deem necessary to effect the work of reclamation and keep the same in repair, and they must elect three of their num-

ber, by the votes or consent of the holders of certificates of purchase or patents representing at least one half the land sought to be reclaimed, to act as a board of trustees to manage the same.

(c) The original section instead of "and estimated in gold and silver coin of the United States. The same" had the words "which charge."

vided warrants heretofore issued shall bear no interest. [*Amendment, approved March 30, 1874; Amendments 1873-4, 47; took effect July 6, 1874.*^(a)]

3458. *District situated partly in different counties—Charges, where paid.*

SEC. 3458. If a district is situated partly in different counties the charge must be paid into the treasury of the county in which the particular tract may be situated.

3459. *Additional may be assessed.*

SEC. 3459. If the original assessment is insufficient to provide for the complete reclamation of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the reclamation works, the trustees must present to the board of supervisors by which the district was formed, a statement of the work done, or to be done, and its estimated cost, and the board must make an order directing the commissioners who made the original assessment, or other commissioners, to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment. [*Amendment, approved March 30, 1874; Amendments 1873-4, 47; took effect July 6, 1874.*^(b)]

3460. *Commissioners to make assessment lists.*

SEC. 3460. The commissioners appointed by the board of supervisors must make a list of the charges assessed against each tract of land.

3461. *Form of list.*

SEC. 3461. The list must contain:

1. A description by legal subdivisions, swamp land surveys, or natural boundaries of each tract assessed;
2. The number of acres in each tract;
3. The names of the owners of each tract, if known; and if unknown, that fact;
4. The amount of the charge assessed against each tract. [*Amendment, approved March 30, 1874; Amendments 1873-4, 49; took effect July 6, 1874.*^(c)]

3462. *Lists, how and where filed.*

SEC. 3462. The list so made must be filed with the treasurer of the county, or if the district is situated in different counties, then the original list must be filed in the county where the petition was filed, and copies thereof, certified by the commissioners, must be filed with the treasurer of each of the other counties. [*Amendment, approved March 30, 1874; Amendments 1873-4, 47; took effect July 6, 1874.*^(d)]

3463. *Lien acquired by filing lists.*

SEC. 3463. From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitute a lien thereon.

3464. *Credit to be given to owners of land.*

SEC. 3464. When the list, or a certified copy thereof, is filed, the treasurer must credit thereon, to each purchaser who has paid in full for his land, eighty cents per acre, less any amount chargeable against him, and must transfer the

(a) The original section did not have the words "and bear interest from date of presentation. provided warrants heretofore issued shall bear no interest."

(b) The original section did not have the words "done, or."

(c) The original section did not have the words "swamp land surveys."

(d) The original section had the word "county" before the first "treasurer," and "partly" before "situated." Instead of "where the petition was filed" it had the words "first in order under alphabetical arrangement."

amount to the credit of the district. [*Amendment, approved March 30, 1874; Amendments 1873-4, 48; took effect July 6, 1874.*^(a)]

3465. *Payment, how made.*

SEC. 3465. The lists thus prepared and filed must remain in the office of the treasurer for thirty days, or longer, if ordered by the board of trustees; and during the time they so remain any person may pay the amount of the charge assessed against any tract of land to the treasurer, in gold coin of the United States, or in warrants of the district drawn by order of the trustees thereof, and approved by the board of supervisors of the county. Where payment is made in the warrants of the district, legal interest must be computed thereon from the date thereof to the time of such payment, when said warrants must be surrendered to the treasurer and by him canceled. [*Amendment, approved April 3, 1876; Amendments 1875-6, 57; took effect from passage.*^(b)]

3466. *Delinquent charges, how collected.*

SEC. 3466. If, at the end of thirty days, or of the longer time fixed by the trustees, all of the assessments have not been paid, the treasurer must return the lists to the district attorney, who must commence actions for the collection of such delinquent assessments with the interest thereon from the time the lists were returned to him, and costs, and for the enforcement of the lien on the land assessed, in the district court of the county in which the same is situated, against the person to whom the same is assessed, and if assessed to unknown owners, then against the real owners, and all persons having or claiming any interest therein, by fictitious names. Service of complaint and summons in such actions may be made either in the manner prescribed by the Code of Civil Procedure, or by posting a copy of the summons at the court-house door, and publishing the same once a week for four successive weeks, in a newspaper published in the county, and such posting and publication is equivalent to personal service on all persons having, or claiming any right, title or interest in the land assessed, whether named as a party in such action or not. Proof of such posting and publication must be made by the certificate of the sheriff, or affidavit of the district attorney. In case the service be made by posting and publication, the defendant or any person claiming any interest in the land assessed, may appear and answer the complaint within forty days after the expiration of the four weeks of posting and publication. Assessments on several tracts may be included in the same action, if listed to the same person. In such action the court may decree and adjudge a lien against the tracts assessed, and order them to be sold on execution or decree, as in other cases of sale of real estate. The judgment or decree must direct that the sale be made for gold and silver coin of the United States. The district attorney must pay the moneys collected to the county treasurer, who must place the same to the credit of the district. [*Amendment, approved March 30, 1874; Amendments 1873-4, 48; took effect July 6, 1874.*^(c)]

3467. *Work of reclamation to be done under direction of trustees.*

SEC. 3467. The work necessary for reclamation must be executed under the direction and in the manner prescribed by the board of trustees.

[a] Original section.

SEC. 3464. When the list or a certified copy thereof is filed the treasurer must credit each owner who has paid in full for his land with eighty cents per acre, less the amount deducted by the register of the land office, under the provisions of section thirty-one of "An Act to provide for the management and sale of lands belonging to the state," approved March twenty-eighth, eighteen hundred and sixty-eight.

[b] Original section.

SEC. 3465. The lists thus prepared must remain in

the office of the treasurer for thirty days, or longer, if ordered by the board of trustees, and during the time they so remain any person may pay the amount of the charge against any tract to the treasurer, without cost.

[c] The original section instead of "commence actions" had the words "proceed at once against delinquents by civil action." It did not have any part of the section as amended, commencing with the words "and for the enforcement of the lien."

3468. *Accounts to be kept open to inspection.*

SEC. 3468. The board must keep accurate accounts of all expenditures, which accounts and all contracts that may be made by them, are open to the inspection of the board of supervisors and every person interested.

3469. *Subsequent purchasers governed by by-laws.*

SEC. 3469. The purchaser of any tract of land which may be unsold in any reclamation district at the date of filing of the by-laws, takes the same subject to all the provisions of such by-laws, and to the charges assessed in pursuance thereof.

3470. *Rights of purchasers.*

SEC. 3470. Such purchaser has all the rights and privileges enjoyed by the original signers of the by-laws, if he pays into the county treasury twenty per cent. of the principal, one year's interest on the remaining eighty per cent., and any charges assessed against the land so purchased for the cost and expense of reclamation, with interest thereon from the date such charges became due.

3471. *Property may be condemned for reclamation purposes.*

SEC. 3471. The trustees of any reclamation district in which the by-laws have been filed, may acquire rights of way for canals, drains, embankments, and other work necessary to the reclamation, and may take materials for the construction, maintenance and repair thereof, from lands outside of as well as within the limits of the district; and if the trustees cannot procure the consent of the owner of the lands or material needed, they, or the president acting in their behalf, may proceed under the provisions of Title VII, Part III, of the Code of Civil Procedure, for the condemnation thereof. [See post, 11,237.]

3472. *Owners may reclaim without intervention of trustees.*

SEC. 3472. Whenever any district, susceptible of one mode of reclamation, is entirely owned by parties who desire to reclaim the same and to manage the reclamation without the intervention of trustees or the establishment of by-laws, they may file the petition provided for in sections 3446 and 3447, and must state therein that they intend to undertake the reclamation on their own responsibility.

3473. *Their powers and duties.*

SEC. 3473. If the petition is granted, the owners of the lands have all the rights, immunities, and privileges granted to boards of trustees; and in all proceedings the names of the owners may be used instead of the names of trustees.

3474. *When works of reclamation are in progress, interest to cease.*

SEC. 3474. Whenever the supervisors of any county in which any reclamation district has been formed certify to the register that works of reclamation are in progress upon a plan and in conformity with the requirements hereinbefore provided, the payment of interest by purchasers in such districts is suspended; but if the works are not completed and accepted within four years from the date of the filing of the petition, then interest for the whole time must be charged and collected by the register.

3475. *Contract by board of supervisors.*

SEC. 3475. The supervisors shall have power, on application of the trustees or owners of any swamp land district, to approve and let any contract to the lowest responsible bidder, and order the county treasurer to pay for the same out of the funds of the district. [Amendment, approved March 30, 1874; Amendments 1873-4, 49; took effect July 6, 1874.^(a)

(a) Original section:

SEC. 3475. After the work of reclamation is completed the trustees, or the owners of the land, if there

have been no trustees for the district, must file in the office of the county recorder of the county in which the original petition was filed, a sworn statement of

3476. Completion of reclamation to be certified to register.

SEC. 3476. Whenever the trustees, or owners of land, if there be no trustees, certify under oath to the board of supervisors who formed the district, and show to their satisfaction that the works of reclamation are completed, or that two dollars per acre in gold coin has been expended on the works of reclamation, the board of supervisors must thereupon certify such facts to the register. [*Amendment, approved March 30, 1874; Amendments 1873-4, 50; took effect July 6, 1874.*]^(a)

3477. If lands have been reclaimed, patents to issue.

SEC. 3477. The register must thereupon credit each purchaser in the district with payment in full for such lands, and the purchasers are entitled to patents therefor, and the register must forward to the treasurer of the county in which any part of the district is situated, a statement, showing the amount paid by each purchaser in the district, including interest, and the county treasurer, after deducting all amounts chargeable against the lands in said district, by reason of moneys drawn from the swamp land fund of the county, must divide the balance pro rata amongst the original purchasers of land in the district, or their assigns, and must pay to each purchaser or his assigns, on demand, the amount found to be due to him from such computation, out of the moneys in his hands to the credit of the swamp land fund of the county. Neither this nor the preceding section applies to districts having outstanding indebtedness represented by controller's warrants drawn on the state treasury, until all such warrants are fully paid. [*Amendment, approved March 30, 1874; Amendments 1873-4, 50; took effect July 6, 1874.*]^(b)

3478. Old districts may reorganize under this chapter.

SEC. 3478. Districts formed under laws in force prior to May twenty-eighth, eighteen hundred and sixty-eight, may reorganize under the provisions of this chapter.

3479. Trustees may compromise indebtedness of, and levy tax to pay the same.

SEC. 3479. But if such districts are in debt, the trustees thereof have no power to impair or destroy any indebtedness of the district without the consent of the creditors, but may make any arrangement with the creditors for the surrender of such indebtedness at less than par, and, if authorized by the by-laws, may assess a charge on the property of the district for the payment thereof.

3480. Bonds and warrants redeemed may be used by trustees in purchase of land in district.

SEC. 3480. If the trustees of any district referred to in the preceding section redeem the bonds and warrants of such district, they may select any unsold lands therein, and pay for the same with such bonds or warrants at par, and upon such payment the register must issue to them certificates of purchase, and when the lands have been reclaimed they are entitled to patents therefor. Such lands may be sold by the trustees; and if sold, the proceeds must be paid into the fund of the district.

the fact, and the recorder must forward a certified copy thereof to the register; and the supervisors must order the treasurer to pay over to the trustees or owners any moneys he may have credited to purchasers on full payments.

(a) Original section.

SEC. 3476. Three years after filing the statement referred to in the preceding section the board of supervisors of the county in which the district, or the larger portion thereof is situated, must, upon the application of the trustees, or the owners of the land, if there are no trustees, appoint three commissioners, who must examine the work done and the lands embraced in the district, and if they find that the lands have been reclaimed they must return and file with the county recorder a sworn statement to that effect, which state-

ment must be by him recorded, and a certified copy thereof forwarded to the register.

(b) Original section:

SEC. 3477. The register must thereupon credit each purchaser in the district with payment in full for such lands, and the purchasers are entitled to patents therefor; and the register must forward to the treasurer of the county in which any portion of the district may be situated a statement showing the amount of money paid into the treasury by each purchaser of land in such district, and the amount to be credited to the purchasers and paid over to the trustees, as heretofore provided, and must order the balance paid over to such purchasers. The statement of the register, signed by the purchasers, is a voucher for the county treasurer.

3481. *Owners of lands in old districts may have their lands set off in separate districts.*

SEC. 3481. If the holders of certificates of purchase or patents for lands within any district formed prior to May twenty-eighth, eighteen hundred and sixty-eight, and in which the lands have not been reclaimed, desire to have their lands set off from such district, they must, in addition to the petition required in section 3446, show to the board of supervisors that their lands are capable of an independent reclamation.

3482. *Liability of new district for proportion of old indebtedness.*

SEC. 3482. The district so set off shall be liable for its just proportion of the legal indebtedness of the original district from which it was set off, when the same shall have been ascertained by law. [*Amendment, approved March 16, 1874; Amendments 1873-4, 142; took effect from passage; repealed conflicting acts.*^(a)]

3483. *Districts, how designated.*

SEC. 3483. All districts organized under this chapter must have a state number, and the register, upon the receipt of a copy of a petition, must number the same, and send their number to the county recorder of the county from which the copy came, and the recorder must number the petition upon record in like manner, and the district must thereafter be known and designated thereby. Districts organized before May twenty-eighth, eighteen hundred and sixty-eight, may retain their number.

3484. *In Sacramento, supervisors may employ clerk.*

SEC. 3484. No member of any board of supervisors or any clerk of such board must receive compensation, other than his regular salary, for services performed under this chapter; but the board of supervisors of Sacramento county may employ a clerk to attend to matters pertaining to swamp lands, and pay such clerk by orders on the swamp land fund of the district for which work is performed, not to exceed five dollars for each day he is actually engaged.

3485. *Payment on lands held for five years, when to be made.*

SEC. 3485. The balance of the principal on all lands in districts having an outstanding indebtedness, which have been sold for five years, is payable at once; and on all lands in such districts which have been sold less than five years, the balance is payable on the first of January following the expiration of five years from the date of sale.

3486. *Occupants of land on banks of stream liable for damages, when.*

SEC. 3486. Any person owning or occupying lands upon the banks of any stream where the lands lying back of such stream are lower than the bank thereof, is responsible for all damages which may be sustained by the owners or occupants of lower lands by reason of any cut or embrasure made in the bank of such stream by the owner or occupant of the bank.

3487. *Mitigation of damages.*

SEC. 3487. If such cuts were made for the purpose of irrigation, and head gates and culverts have been made which competent persons consider sufficient to restrain the water, and where great diligence has been made to prevent damage, these facts may be pleaded and proved, in mitigation of damages.

(a) Original section:

SEC. 3482. If the district from which they seek to be set off is not in debt, then the lands may at once be set off; but if the district has an outstanding indebtedness, then the board must determine what proportion of the debt the district so sought to be set off should pay; and

upon the payment thereof the lands described in the petition constitute a district, and are subject to all the conditions of this chapter. The amount paid by the petitioners is a charge against the district so formed, and must be collected and paid the same as moneys for reclamation.

3488. *Certain lands excepted from the provisions of this chapter.*

SEC. 3488. All swamp and overflowed, salt marsh, and tide lands within one mile of the state prison at San Quentin, within the city and county of San Francisco, city of Oakland, or within five miles of the corporate limits of either, or within two miles of any incorporated city or town, are excluded from the operation of this chapter. The lands mentioned and described in an act to survey and dispose of certain salt marsh and tide lands belonging to the state of California, approved March thirtieth, eighteen hundred and sixty-eight, and in the act supplementary and amendatory thereto, approved April first, eighteen hundred and seventy, must be disposed of as in such acts provided, which are hereby continued in force.

3489. *Districts may be consolidated.*

SEC. 3489. Two or more contiguous districts may be consolidated by the written concurrence of a majority in acreage, of the land owners of such district. An agreement, stating the terms of such consolidation, and the names of the trustees of the consolidated district, must be signed by the trustees of each district, or a majority of them, and be recorded in the recorder's office of the county in which the districts are situated. A certified copy shall be sent to the register of the land office, and he must number such district as consolidated district No. —, and send the number to the county recorder, in which the districts are situated, and the consolidated district must thereafter be known and designated thereby. [*New section, approved March 30, 1874; Amendments 1873-4, 51; took effect July 6, 1874.*]

3490. *Injury to levee—Action—Parties.*

SEC. 3490. Any person who shall cut, injure or destroy any levee, or other works of reclamation in any district, is responsible for all damages which may be occasioned thereby to such levee works; and an action therefor must be brought in the district court of the county, or either of the counties, in which such levee or works are situated, in the names of the trustees of the district. If there be no trustees, then the action may be brought in the name of any land owner in the district. The amount recovered in such action must be paid to the treasurer of the county, who must place the same to the credit of the district. [*New section, approved March 30, 1874; Amendments 1873-4, 51; took effect July 6, 1874.*]

An Act to provide for the proper distribution, in the several county treasuries, of funds arising from the sale of swamp lands.

Approved, March 28, 1874; 1873-4, 770.

Swamp land fund.

SECTION 1. Whenever hereafter a swamp land district shall be organized, and in all cases where districts have heretofore been organized, the board of supervisors of each county in which any portion of the lands of such district are located, shall, upon the application of any party interested, direct the auditor and treasurer to set apart from the swamp land fund, in the county treasury, all the money which has been or shall hereafter be received in payment of principal and interest on such lands, as a fund to the credit of such district, except such money as may have previously been expended from the swamp land fund for the benefit of land within the district.

How used.

SEC. 2. The money in the district fund, created by section one of this act, shall be paid out only for the purpose of reclaiming said land, or to the owners of such land after reclamation, as now provided by law; and in all cases where moneys paid in upon such lands have been diverted to the use and benefit of other lands, they shall be replaced out of the first receipt from the land so

benefited. In all cases where any expense has been paid from the county swamp land fund for attorneys' fees in the examination of the character of any land, in any reclamation district, or when any expense has been paid from the county swamp land fund pertaining to the land in said district, the county treasurer shall deduct said amount from the amount otherwise found due to the land for which said expense was paid, and only return to the owner of the land so much of the money paid into the treasury on said land as shall remain after deducting the said amount paid for expense pertaining to said land.

SEC. 3. This act shall not apply to districts upon which controllers' warrants are outstanding, until after all of such warrants are paid.

ARTICLE III.

SCHOOL LANDS.

3494. *School lands, price and payments.*

SEC. 3494. The unsold portion of the five hundred thousand acres granted to the state for school purposes, the sixteenth and thirty-sixth sections and lands selected in lieu thereof, must be sold at the rate of one dollar and twenty-five cents per acre, in gold coin, payable, twenty per cent. of the principal within fifty days from the date of the certificate of location issued to the purchaser, the balance, bearing interest at the rate of ten per cent. per annum in advance, is due and payable within one year after the passage of any act by the legislature requiring such payment, or before if desired by the purchaser.

3495. *Affidavit on application to purchase sixteenth or thirty-sixth section.*

SEC. 3495. Any person desiring to purchase any portion not less than the smallest legal subdivision of a sixteenth or a thirty-sixth section of any township which has been surveyed by the United States, must make an affidavit that he is a citizen of the United States, or has filed his intention to become so, a resident of the state, of lawful age; that he desires to purchase such lands (describing the same by legal subdivisions) under the provisions of this title; that he has not entered any portion of any sixteenth or thirty-sixth section which, together with that now sought to be purchased, exceeds three hundred and twenty acres; that there is no occupation of such lands adverse to any that he has, or if there is an adverse occupation, then the affidavit must show that the township has been sectionized three months, and that the adverse occupant (giving his name) has been in such occupation for more than sixty days.

3496. *Affidavit, when applicant is female.*

SEC. 3496. If the applicant is a female, the affidavit must show that she is entitled to purchase and hold real estate in her own name.

3497. *Occupants protected.*

SEC. 3497. Every occupant of a sixteenth or thirty-sixth section is protected in his occupancy for three months after the township has been sectionized; and any person settling upon a sixteenth or thirty-sixth section after a township has been sectionized has sixty days after such settlement in which to file the application required in the preceding section.

An Act to protect bona fide settlers upon public lands.

Approved March 23, 1874; 1873-4, 543.

Bona fide settlers preferred purchasers.

SECTION 1. Bona fide settlers upon any sixteenth or thirty-sixth section, which at the time of such settlement was embraced within any survey made under claim or color of any Spanish or Mexican grant, but which has since been or hereafter may be restored to the public domain by the proper officers of the

government of the United States, shall be preferred purchasers for the lands so settled upon by them to the lines of their actual possession, and in accordance with the general system of government surveys, and not exceeding three hundred and twenty acres; and all applications made by such settlers to purchase said lands from the state within one year from the date of such restoration, are hereby declared to entitle said settlers to become preferred purchasers for the lands so held as aforesaid, in the same manner and to the same extent as if made within the sixty days, as now provided for by law; and said sixty days' preferment is hereby extended to, and declared to be, one year from the date of said restoration; and all such applications made within one year from the date of said restoration shall be held and deemed as valid and binding as if made within sixty days from the date of said settlement.

SEC. 2. This act shall take effect and be in force from and after its passage.

An Act to reserve from sale the north half of section sixteen in township seven south and range three east, Monte Diablo meridian.

Approved April 1, 1876; 1875-6, 679.

Reserved from sale.

SECTION 1. The north half of section sixteen, in township number seven south and range number three east, Monte Diablo meridian, is hereby reserved from sale by the State of California until otherwise directed by the legislature.

SEC. 2. This act shall take effect and be in force from and after its passage.

3498. *Applications not to be approved for sixty days.*

SEC. 3498. All applications filed in the surveyor-general's office must be retained sixty days before approval.

3499. *Contests, how determined.*

SEC. 3499. If two or more claim the same land, the contest must be determined as provided in Article I of this chapter; but no person has a right to purchase by reason of any settlement or improvement, unless application is made within the time above prescribed.

3500. *Applications for other than sixteenth or thirty-sixth section.*

SEC. 3500. Any person desiring to purchase any lands mentioned in section 3494, except the sixteenth and thirty-sixth sections, must make an affidavit that he is a citizen of the United States (or has filed his intention of becoming so), a resident of the state, of lawful age; that he desires to purchase such lands (describing the same by legal subdivisions) under the provisions of this title, and that there is no valid claim to such land other than that of the applicant; that he has not entered any land in part satisfaction of the grant in lieu of sixteenth or thirty-sixth sections, which, together with that now sought to be purchased, exceeds three hundred and twenty acres.

3501. *Affidavit when female is applicant.*

SEC. 3501. If the applicant is a female, the affidavit must also show that she is entitled to purchase real estate in her own name.

3502. *Land warrants received in payment of purchase-money of certain lands.*

SEC. 3502. School land warrants issued by authority of the state are receivable in payment of the purchase-money of any part of the five hundred thousand acres of land granted to the state for school purposes. Such payment must be made to the register and the warrants canceled before the certificate of purchase is issued.

3503. *Right of pre-emption on school land sections.*

SEC. 3503. In all cases where any person has purchased any part of a sixteenth or thirty-sixth section from the United States, or shall hereafter make such purchase, or shall be an actual settler on any sixteenth or thirty-sixth section, and

entitled to a pre-emption thereto under the laws of the United States, for which lands this state has received indemnity, or will or would be entitled to indemnity under the laws of the United States, the right of the state to such sixteenth and thirty-sixth sections, or parts thereof, are relinquished to the United States for the use of such purchasers and their assignees, and of such pre-emptors. When any person who is in good faith a settler upon any such lands, fails to acquire a title thereto from the United States, he may, within six months after such failure, apply to the state to purchase the same, and his application shall have preference over all other applications for the purchase of such lands. [*New section, approved March 30, 1874; Amendments 1873-4, 52; took effect July 6, 1874.*]

An Act regulating the sale of mineral lands [in school sections] belonging to the state.

Approved March 28, 1874; 1873-4, 766.

Affidavit for purchase.

SECTION 1. Any person desiring to purchase from this state any portion of any sixteenth or thirty-sixth section, that shall have been designated by United States survey as of a mineral character, or which is so in fact, shall make an affidavit before some officer authorized to administer oaths, that he or she is a citizen of the United States, or, if a foreigner, that he has filed his intention to become a citizen of the United States; that he or she is of lawful age, and desires to purchase said land, giving a description thereof by legal subdivisions; that he or she has not entered any portion of such mineral lands which, together with that applied for in such affidavit, will exceed forty acres; that there is no occupation of said land adverse to that which he or she holds, or, if there be any adverse occupation thereof, then he or she must state the name of such adverse occupant, together with the fact that the plat of the township has been on file six months or over, and that such adverse occupant has been in such occupation six months or over.

Preferred purchasers.

SEC. 2. Any person that shall be in the actual possession of any of said lands described in section one, at the time of the survey thereof by the United States, or at the time of the passage of this act, shall be considered a preferred purchaser thereof to the extent of his or her mining claim; provided, he or she make application for the purchase of the same on or before the first day of January, eighteen hundred and seventy-seven, if the plat of such survey be already filed in the United States land office; and if not so filed, then within six months after the filing of such plat, as aforesaid. [*Amendment, approved February 3, 1876; 1875-6, 20; took effect from passage; repealed all acts in conflict.*^(a)]

Contests and actions.

SEC. 3. When a contest shall arise as to the mineral character of the lands applied for, or from any other cause, the surveyor-general, or the register before whom the contest is made, must, within thirty days after the adverse application is filed, unless sooner referred, at the request of either claimant, make an order referring such contest to the district court of the county within which the land is situated, and must enter such order in the proper book of his office, and forward a copy thereof to the clerk of the court to which the reference is made. Upon the filing of a copy of such order with the clerk of the court, either party may commence an action in said court to determine the conflict, and the court shall have full and complete jurisdiction to hear and determine the same. Unless an action shall be commenced within ninety days after the copy of the

(a) The original section did not have the words "to the extent of his or her mining claim." It required the application for purchase to be made within six months after the filing of the plat of survey in the United States land office or within ten months after the passage of the act.

order of reference shall have been filed with the clerk of the court, the party making such demand, or the adverse claimant, if the case is referred without demand, shall be deemed to have waived and surrendered his or her right to purchase, and the surveyor-general or register shall proceed as though his or her application had not been made.

Sale.

SEC. 4. All lands sold under the provisions of this act shall be sold for the sum of two dollars and fifty cents per acre, in United States gold coin, payable to the treasurer of the county in which the lands are situated, within fifty days from the date of the approval by the surveyor-general; and in case said payment is not made within said fifty days, the land described in the location shall revert to the state without suit, and said location shall be and become null and void. All payments made to the county treasurer as above provided, shall be paid over and accounted for as other moneys received for state lands are required to be paid over and accounted for.

Manner of proceedings.

SEC. 5. The surveyor-general and register shall, in the matter of approving locations, issuing certificates of purchase or patents, or in other proceedings relating to the sale of lands of a mineral character, which proceedings are not provided for in this act, proceed in the same manner as is now provided for the sale of sixteenth and thirty-sixth sections which are not of a mineral character.

Vested rights.

SEC. 6. All patents issued by the state to any portion of any sixteenth or thirty-sixth section, shall be subject to any vested and accrued water rights, ditches, and reservoirs, used in connection therewith, acquired by priority of possession under local customs, and the decisions of the courts, and the right of way for the construction of ditches and canals, for mining and other purposes, over all of the sixteenth and thirty-sixth sections owned by the state, is hereby granted and confirmed.

Patents, payments, purchases.

SEC. 7. After the passage of this act, no patent shall be issued for any of the lands described in this act upon which, at the time of the application therefor, there was and still is any actual bona fide mining claim, except to the person who is the owner of such mining claim under local mining customs; and when an applicant for such lands, not owning such mining claim, shall have paid the purchase-money therefor, in whole or in part, he may present his certificate of purchase, and receive in exchange therefor, from the register, a certificate showing the whole amount paid; and the controller, upon the surrender of such certificate, must draw his warrant in favor of the person surrendering such certificate, for the amount therein specified, on the treasurer of state, who must pay the sum out of the fund into which the purchase-money was paid; provided, that the owner of such mining claim, under such mining customs, shall apply to purchase the same within six months after the plat of the township containing such land shall have been filed in the local United States land office, or on or before the first day of January, eighteen hundred and seventy-seven; and provided further, that any owner of a bona fide mining claim, who shall have entered into an agreement with the applicant for any portion of [the] sixteenth or thirty-sixth section upon which said mining claim is situated, for the procurement of a title for the same, shall not avail himself of the provisions of this section. The governor of this state shall not sign any patent

contrary to the provisions of this act. [*Amendment, approved February 3, 1876; 1875-6, 20; took effect from passage; repealed conflicting acts.*^(a)]

SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its passage.

ARTICLE IV.

PAYMENTS, CERTIFICATES OF PURCHASE, AND PATENTS.

3512. *Payments, how made.*

SEC. 3512. Whenever any survey or location has been made or approved, the purchaser must, within fifty days from the date of approval or location, present his copy of the same to the county treasurer of the county in which the land, or some part thereof, is situated, who must receive the amount to be paid, and the fee for the certificate of purchase, indorsing his receipt therefor upon the certificate of location or survey, and returning it to the purchaser.

3513. *Failure to pay to work forfeiture.*

SEC. 3513. In case payment is not made within fifty days, the lands described in the survey or location revert to the state without suit, and the survey or location is void. All subsequent payments must be made to the county treasurer, in like manner, who must indorse the same upon the certificate. The treasurer must direct the purchaser to take the certificate so indorsed to the auditor, who must charge the treasurer with the amount received, and make his check upon the indorsed receipt.

3514. *Register to issue certificates of purchase.*

SEC. 3514. Whenever the register receives from a county treasurer a statement showing that an applicant for state lands has made the first payment, he must issue to the person entitled thereto a certificate of purchase, showing the class of land purchased, the number of acres, the price per acre, the date of payment, the date from which interest is to be computed, the amount paid and the amount remaining unpaid, which certificate is prima facie evidence of title. [*Amendment, approved March 30, 1874; Amendments 1873-4, 52; took effect July 6, 1874.*^(b)]

3515. *Certificates of purchase may be sold.*

SEC. 3515. Certificates of purchase, and all rights acquired thereunder, are subject to sale, by deed or assignment, executed and acknowledged before any officer authorized by law to take acknowledgments of conveyances of real property, or before the register.

3516. *Sale to be recorded.*

SEC. 3516. All such sales must, when the deed or assignment is recorded by the county recorder, be reported by him to the register, to be entered in the books of his office.

3517. *Compensation of recorder.*

SEC. 3517. The recorder is entitled to receive from the purchaser, for making such report, a fee of fifty cents.

3518. *Duplicate for lost certificate.*

SEC. 3518. If the owner of a certificate of purchase claims that it has been lost, destroyed, or is beyond his control, the register must take testimony concerning the loss, destruction, or reason why the same is beyond his control.

(a) The original section after "local mining customs" had the words "and not to such owner in excess of forty acres;" and instead of "on or before the first day of January, eighteen hundred and seventy-seven" it had the words "within ten months after the passage of this act."

(b) The original section had the word "primary" instead of "prima facie."

But the party must, before the hearing, make affidavit that he has not sold the said certificate of purchase, or the land described therein; and must publish a notice in some newspaper in the county where the land is situated; or if there is no newspaper published in the county, then in some newspaper of general circulation in the county, for at least four weeks, describing the certificate and the lands for which the same was issued, stating the name of the person to whom the same was issued, and the person then claiming to own it, together with the time and place of the hearing. If the register is satisfied of the loss or destruction of the certificate, or that it is beyond the control of the person owning the same, he must issue to the owner thereof a duplicate, with the word "duplicate" written across the face thereof in red ink. Such duplicate shall have the same force and effect as the original. If there is a contest as to the issuing of a duplicate certificate, the register may hear and determine the same, or may refer it to the proper court, as provided in section 3414. [*Amendment, approved March 30, 1874; Amendments 1873-4, 53; took effect July 6, 1874.*]^(a)

3519. *Register to prepare patents, when.*

SEC. 3519. Whenever final payment has been made for any tract of land, the selection of which has been accepted and approved by the United States authorities, or when the tract finally paid for or reclaimed is swamp and overflowed, salt marsh, or tide lands, the register, upon the surrender of the certificate of purchase by the person entitled to the same, must prepare a patent for the land, and send it to the governor, together with a certificate that the laws in relation thereto have been complied with, that payment in full has been made, and that the party named in the prepared patent is entitled to it.

3520. *Patent, how executed.*

SEC. 3520. The patent must then be signed by the governor, attested by the secretary of state, sealed with the great seal of the state, and be countersigned by the register.

3521. *Not to issue until one year after approval of survey, etc.*

SEC. 3521. No patent must issue until after the expiration of one year from the date of approval of the survey or location by the surveyor-general, nor until the lands are relinquished to the state by authority of the general land office at Washington. Such relinquishment is not required for locations of the sixteenth and thirty-sixth sections in place, or for swamp and overflowed lands, shown to be such by the official surveys made by authority of the United States surveyor-general.

3522. *Patents to be recorded and delivered.*

SEC. 3522. The register must record all patents in books to be kept in his office for that purpose, and then deliver them to persons entitled thereto.

3523. *Effect of patent issued to deceased persons.*

SEC. 3523. Where a patent for lands is issued in the name of a deceased person, the title is vested in the heirs, devisees, or assignees of such person in the same manner as if the patent had issued to such person during life.

(a) Original section:

§ 3518. If the holder of a certificate of purchase claims that it has been lost or destroyed, the register must take testimony concerning the loss or destruction. But the party must, before the hearing, publish a notice in some newspaper in the county where the land is situated, or if there is no newspaper published in the county, then in some newspaper of general circulation in the county, for at least four weeks, describing the certificate and the lands for which the same was issued by legal subdivisions, and giving the name of

the person to whom it was issued, and the person then claiming to own it. If the register is satisfied of the loss or destruction of the certificate, he must issue to the owner thereof a duplicate, with the word "Duplicate" written across the face thereof in red ink. Such duplicate has the force and effect of the original. If there is a contest as to the issuing of a duplicate certificate, the register may hear and determine the same, or may refer it to the proper court, as provided in section 3414.

An Act to provide for an examination into the sale and disposal of state lands.

Approved April 1, 1876 ; 1875-6, 798.

Governor to appoint commissioners.

SECTION 1. Within sixty days after the passage of this act the governor shall appoint three suitable persons, who shall constitute a commission for the purposes hereinafter mentioned, and shall be known as the state land commission, and shall hold office for the period of one year from and after their appointment by the governor.

Commissioners to qualify and organize—Duty of commissioners.

SEC. 2. The commissioners appointed under the provisions of section one of this act shall, within thirty days after their appointment, meet at some convenient place in the city of Sacramento or the city of San Francisco, and shall take an oath in writing before a notary public, or other officer duly authorized to administer oaths, to faithfully perform the duties enjoined by the provisions of this act, and shall thereupon organize by the election of a chairman and secretary from the members of the commission, and shall forthwith proceed to the investigations provided for by this act. It shall be the duty of said commission:

1. To ascertain all grants made by the United States to this state;
2. To examine all titles issued by this state, together with the manner in which such titles have been issued;
3. To ascertain the names of all parties to whom the state has issued titles for more than three hundred and twenty acres, together with the number of acres in excess of this amount sold to any one person, and to ascertain whether such sales have been made for parties directly or through attorneys;
4. To ascertain the amount of controller's warrants outstanding against the several reclamation districts, together with their mode of issue and the consideration received therefor by the district upon which they were made a lien;
5. To investigate the affairs of the surveyor-general's office from the time of the organization thereof;
6. To make such examinations into any and all matters connected with the disposal and sale of state lands as shall be deemed to promote the best interests of the state.

Attorney-general to aid commissioners.

SEC. 3. It is hereby made the duty of the attorney-general to render such professional assistance, not incompatible with his other official duties, as the commission may require. The commission may employ an attorney-at-law versed in the land laws of this state, to assist in the investigations provided for in this act, at an expense not to exceed two hundred and fifty dollars per month while so employed.

Powers of commissioners.

SEC. 4. The commissioners shall have power to administer oaths, to send for books and papers, and to compel the attendance of witnesses, and for the necessary purposes of their investigations shall have access to the files and records of all state offices.

Reports of same.

SEC. 5. The commission shall report to the governor from time to time, as the public interests may require, and shall make a full and complete report of all their proceedings to the legislature at its next regular session.

Expenses of commission.

SEC. 6. The commission shall provide proper offices and furniture for its own use, at an expense not exceeding nine hundred dollars per annum, and for contingent expenses not to exceed twenty-five dollars per month.

Same, report to board of examiners.

SEC. 7. An itemized account of the expenses of the commission, including office rent, light, fuel, salaries, and other necessary expenses, together with the amounts expended in procuring witnesses, and other testimony touching the investigation herein provided for, shall be made monthly to the board of examiners, verified by the oath of the chairman of the commission.

Salaries.

SEC. 8. The members of said commission shall be paid a salary of two hundred dollars per month each.

Board of examiners to audit accounts.

SEC. 9. The board of examiners shall audit the accounts of the commission, and when found correct shall order the controller of state to draw his warrants for the several accounts found due, in favor of the persons to whom the same are due respectively.

Controller to draw warrants.

SEC. 10. The controller of state is hereby directed to draw his warrant upon the state treasury for the several amounts audited by the board of examiners, in favor of the persons to whom the same are due respectively, and the state treasurer is hereby required to pay the same out of the general fund in the state treasury.

SEC. 11. This act shall take effect immediately.

ARTICLE V.

SELECTION AND SALE OF UNIVERSITY LANDS.

3533. *Regents of university to select and sell certain lands.*

SEC. 3533. The regents of the university may order the selection of the one hundred and fifty thousand acres of land granted to the state for the use of an agricultural college, and dispose of the same at the price and in the manner fixed by them.

3534. *Land agent of university, duty of.*

SEC. 3534. The land agent of the university, as the agent of the state, must select the lands according to the instructions of the board, and issue certificates of purchase and patents to purchasers who comply with the conditions fixed by the board; and the regents must invest all moneys accruing from the sale of lands as they may deem best, subject to the conditions of the act of congress granting such lands.

3535. *Certain moneys to be paid out of treasury upon order of regents.*

SEC. 3535. All moneys, securities, or other properties arising from the sale of the seventy-two sections granted to the state for a seminary of learning, and from the sale of the ten sections granted to the state for the erection of public buildings, must be paid out of the state treasury on the order of the regents of the university.

3536. *Purchasers of certain lands who have not paid up, to be included in delinquent list.*

SEC. 3536. All persons who have purchased any portion of either of the grants mentioned in the preceding section, and who have not paid in full therefor, must be included in the delinquent list, and the district attorney must proceed against such delinquents as provided in sections 3547 and 3548, and the provisions of sections 3548 to 3556, inclusive, are made applicable to such proceedings. If such lands revert to the state, they pass under the control of and may be sold by the board of regents of the university.

An Act concerning the selection and sale of university lands.

Approved March 13, 1874; 1873-4, 356.

Land contests, how determined.

SECTION 1. In all cases when a contest shall arise between two or more persons concerning the right of such persons to purchase any portion of the one hundred and fifty thousand acres of land granted to the state for the use of an agricultural college, if either party shall demand a trial in the courts of the state, the land agent of the university, as the agent of the state, shall make an order referring said contest to the district court of the county in which the land involved is situated, and shall enter said order in the proper record-book of his office; provided, that the party making such demand shall prosecute his contest to judgment within six months from the date of such demand, unless for cause satisfactory to the court. Either party may bring an action in the district court of the county in which the land in question is situated, to determine such conflict, and the proffer of a certified copy of the entry, made by the said agent, shall give the said district court full and complete jurisdiction to hear and determine said conflict; and upon the filing with the said agent of a copy of the final judgment of said court, he shall issue the certificate of purchase or other evidence of title, in accordance with said final judgment.

Affidavit of purchaser.

SEC. 2. Whenever any resident of this state desires to purchase any part of the one hundred and fifty thousand acres of land granted to the state for the use of an agricultural college, he or she shall make an affidavit before any officer authorized to administer oaths, that he or she is a citizen of the United States (or, if a foreigner, then that he has filed his intention of becoming a citizen), a resident of the state, of lawful age, that he or she desires to purchase said land, giving a description thereof by legal subdivisions, and that there are no improvements of any kind on said land other than those of the applicant; or if there be improvements other than his own, then he or she shall state that such improvements are the property of (giving his or her name), and have been upon the land for three months or over, and that the township has been sectionized and the plats of survey filed in the land office of the district in which the land is located, for three months or over, which application shall be forwarded to the said land agent of the university.

SEC. 3. This act shall be in force from and after its passage.

ARTICLE VI.

PROCEEDINGS AGAINST DELINQUENT PURCHASERS.

3546. *Register to furnish statement of delinquents to district attorneys.*

SEC. 3546. The register must, on the first day of May of each year, forward to the district attorney of each county a statement embracing all the lands in the county upon which payments have not been made, which statement must show the name of the purchaser, the number and date of the survey or location and of the certificate of purchase, the amount paid, the amount unpaid, and the amount then due. No lands within any reclamation district must be embraced in such statement after the receipt by the register of the certificate of the board of supervisors that works of reclamation have been commenced.

3547. *Delinquent purchasers, and proceedings against.*

SEC. 3547. Upon receipt of the delinquent list the district attorney must add thereto a notice that if the amount due is not paid in fifty days after the date thereof he will commence suit to foreclose the interest of purchasers in the lands, and must publish the list and notice for four weeks immediately follow-

ing the date of the notice in a newspaper published in the county, or if there is no newspaper published therein, then he must post copies of the same in at least five public places in the county.

3548. *Action.*

SEC. 3548. After the expiration of the fifty days he must, in the name of the people of the State of California, commence actions in the district court against all purchasers or holders of certificates of purchase who have not either paid the amount due, together with the cost of publication, or surrendered the title to the state, as provided in section 3570, to obtain a judgment of foreclosure of the interest of the purchaser or assignee of the purchaser in the land, and to annul the certificate of purchase.

3549. *Service of summons.*

SEC. 3549. Service of the summons in such action may be made by publication in some newspaper published in the county for four weeks, or if no newspaper is published in the county, then by posting one copy of the summons for four weeks at the court-house door of the county, and two copies in public places in the township where the land is situated.

3550. *Copy of decree to be filed.*

SEC. 3550. Twenty days after the entry of judgment the district attorney must file in the office of the register, and in the recorder's office of the county in which the land is situated, certified copies thereof.

3551. *When purchaser may make payment and be restored to all rights.*

SEC. 3551. The holder of the certificate of purchase may, at any time before such filing, pay to the sheriff the amount due the state, and the costs of suit that have accrued up to the time of payment; whereupon the district attorney must dismiss the suit or vacate the judgment, and the purchaser or holder of the certificate of purchase is restored to his rights in the premises.

3552. *When judgment binds assignee.*

SEC. 3552. A judgment against the purchaser binds the assignee, unless the notice of the assignment was filed with the register before the commencement of the action.

3553. *Compensation of district attorney.*

SEC. 3553. The district attorney is entitled to receive ten dollars for each suit brought, to be taxed as costs.

3554. *After filing decree, land subject to sale.*

SEC. 3554. After judgment foreclosing the interest of the purchaser or the holder of the certificate has been entered and the certified copies filed, the land is again subject to entry and sale.

3555. *Costs of suits taxed and collected.*

SEC. 3555. Upon the rendition of a judgment foreclosing the interest of the purchaser or of his assigns in the land, and annulling the certificate of purchase, judgment for costs must be entered against the defendant; but if execution issued thereon is returned not satisfied, the judgment and costs must be paid from the principal or interest paid by the purchaser at the time of the original location.

3556. *Subsequent purchasers may defend suits and protect their interests, how.*

SEC. 3556. Any person having a conveyance of the whole or any portion of the lands described in any certificate of purchase, to annul which suit has been commenced, but to whom the certificate has never been surrendered, may defend such action; and if it appears to the court that he is entitled to any portion of the lands described, and the holder of such certificate does not pay the amount due, the court must order the certificate annulled and a new one to issue to such

person upon payment into court by him of the amount due the state upon the whole tract; and such person is thereupon entitled to two certified copies of the decree, one of which he must file in the county recorder's office and the other with the register.

ARTICLE VII.

MISCELLANEOUS PROVISIONS RELATING TO PUBLIC LANDS.

3566. *Duplicates for lost or defaced land warrants.*

SEC. 3566. Any person making application for a duplicate school land warrant, in lieu of one lost or destroyed, must make proof by affidavit to the register that he is the owner of such warrant, that it has not been located, and of the facts establishing the loss or destruction thereof, and must file with the register a bond, with two or more sureties, to be approved by the register, payable to the State of California, in double the value of the warrant, conditioned that the warrant will not be presented for location.

3567. *When warrant cannot be made available.*

SEC. 3567. When for want of a proper acknowledgment of an assignment of the original land warrant, or partial destruction or defacement thereof, or for any other cause, it cannot be made available, the applicant must prove that he is the owner of the warrant, and that it has not been located, and must file the original for cancellation with the register.

3568. *Certificate of register.*

SEC. 3568. The register must certify that the applicant is entitled to a duplicate warrant in lieu of the one proved to have been lost or destroyed or presented for cancellation, and upon presentation of such certificate to the governor he must deliver to the applicant a duplicate warrant bearing the same number as the original warrant, with the word "Duplicate" written across the face thereof, which duplicate has the same force and effect as the original.

3569. *Duties of register.*

SEC. 3569. The register must not give the certificate until he is satisfied that the original has not been located, or, if located, that the lands have not been and will not be charged by the federal government as part of the five hundred thousand acres of land granted to this state.

3570. *Abandonment of entry or location, how made.*

SEC. 3570. Whenever a purchaser of land upon credit desires to abandon the location or entry made by him, he may do so by conveyance of his title to the state and surrender of the certificate of purchase, or, if it has been lost, by filing an affidavit of that fact with the register.

3571. *If lands sold are not the property of the state, the purchaser to be repaid.*

SEC. 3571. If any land sold is not the property of the state, the holder of the certificate of purchase or patent may receive in exchange therefor from the register a certificate showing the amount paid and the class of land upon which the payment was made.

3572. *Controller's warrant.*

SEC. 3572. The controller, upon the surrender of such certificate, must, if the land sold was swamp and overflowed, draw his warrant in favor of the person surrendering such certificate for the amount therein specified upon the treasurer of the county in which the land is situated, who must pay the same out of the swamp and overflowed land fund; if the land sold was not swamp and overflowed, then the controller must draw such warrant on the treasurer of state, who must pay the same out of the fund into which the purchase-money was paid.

3573. *Certain applications made valid.*

Sec. 3573. All applications made prior to March twenty-fourth, eighteen hundred and seventy, for the purchase of lands under the provisions of an act to provide for the management and sale of lands belonging to the state, approved March twenty-eighth, eighteen hundred and sixty-eight, if there was not, on the twenty-fourth of March, eighteen hundred and seventy, two or more applicants for the purchase of, or conflicts between claimants of the same land, are valid, although the affidavits on which such applications were based are neither in form nor substance in compliance with the provisions of such act.

3574. *Fees, application of.*

Sec. 3574. Each application for lands must be accompanied by a fee of five dollars, and no application shall be received, filed, or noted in any way until such fee is paid. The surveyor-general shall charge the same fees as are allowed the register for like services; and all fees collected by either the surveyor-general or register shall be paid into the state treasury on the first Monday of each and every month, and placed to the credit of the general fund; and said officers shall, on the first Monday of each month, make a written report to the state controller, stating the amount of fees so paid, together with the sources from which they were derived, and the several amounts, by items. The surveyor-general and register, whenever it may be necessary, may purchase such maps and records as the needs of their office may demand, but all claims against the state, authorized by this section, shall be certified to the state board of examiners, and if the same be allowed, the board shall direct the controller of state to draw his warrant in payment of the same, payable out of the general fund. [*Amendment, approved February 10, 1876; Amendments 1875-6, 57; took effect from passage.*]⁽¹⁾

CHAPTER II.

THE YOSEMITE VALLEY AND MARIPOSA BIG TREE GROVE.

3584. *Commissioners to manage.*

Sec. 3584. The governor of this state and the eight other commissioners appointed by the governor on the twenty-eighth day of September, eighteen hundred and sixty-four, in accordance with the terms of an act of congress entitled an act authorizing a grant to the State of California of the Yosemite valley and of the land embracing the Mariposa big tree grove, approved June thirteenth, eighteen hundred and sixty-four, constitute a board to manage such premises. Any vacancy occurring in the board may be filled by the appointment of the governor. The commissioners are known as "The Commissioners to manage the Yosemite Valley and the Mariposa Big Tree Grove," and under such name they and their successors may sue and be sued, and have full power to manage and administer the grant made and the trust created by the act of congress, and to make and adopt all rules, regulations, and by-laws for their own government, and the government, improvement, and preservation of such premises.

3585. *Guardian, and his compensation.*

Sec. 3585. They may appoint a guardian of the premises, removable at their

(1) Original section:

Sec. 3574. Each application for lands must be accompanied by a fee of five dollars. The surveyor-general may charge the same fees as are allowed the register for like services, and fees collected by the surveyor-general or register may be used in defraying the expenses of procuring maps, records, and documents, and extra assistance in the office of either, the balance thereof, if any, to be paid into the state treasury. The

surveyor-general must, in his biennial report, include a statement of the amount of fees received by both, and how the same were disposed of.

It was previously amended by act of March 30, 1874; Amendments 1873-4, 53, so as to add to the original section after the word "treasury" the words "quarterly, on the first Monday in January, April, July and October."

pleasure, who must perform such duties as they may prescribe, and may receive such compensation as they may fix, not to exceed five hundred dollars per annum.

3586. Report of commissioners.

SEC. 3586. The commissioners must make a report of their proceedings and of the condition of the premises, through the governor, to the legislature, at every regular session thereof.

CHAPTER III.

STATE BURYING GROUNDS.

3596. Title vested in state—Who may be interred therein.

SEC. 3596. The fee to the state burying ground, in the city cemetery of the city of Sacramento, is in the people of the State of California, and there may be interred therein any person who, at the time of his death, was a state officer, or a member of the senate or assembly.

3597. Duties of trustees.

SEC. 3597. The board of trustees of the state burying ground have the control and management of the grounds and the expenditure of all moneys appropriated for the maintenance or improvement thereof.

TITLE IX.

Revenue.

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CHAPTER I.

PROPERTY LIABLE TO TAXATION.

3607. Property subject to taxation.

SEC. 3607. All property within this state, except the property of the United States, of the state, and of municipal corporations, is subject to taxation.

3608. Added 1881, page 56.

CHAPTER II.

DEFINITIONS.

3617. Terms and phrases defined.

SEC. 3617. Whenever the terms mentioned in this section are employed in this title, they are employed in the senses hereafter affixed to them:

~~74-148~~ 81-56
 26-58 89-203
 78-64 85-57

First. The term "real estate" includes:

1. The ownership of, claim to, possession of, or right to the possession of land;
2. All mines, minerals, and quarries in and under the land, and all rights and privileges appertaining thereto;
3. Improvements.

Second. The term "improvements" includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land;
2. All fruit, nut-bearing, or ornamental trees and vines not of natural growth.

Third. The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate."

Fourth. The term "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor. [*Amendment, approved April 3, 1876; Amendments 1875-6, 58; took effect from passage.*^(a)]

CHAPTER III.

ASSESSMENT OF PROPERTY.

3627. *Property assessed at full cash value.*

SEC. 3627. All property must be assessed at its full cash value.

3628. *Assessment to be made, when.*

SEC. 3628. The assessor must, between the first Monday in March and the first Monday of July in each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, and must assess such property to the persons who own, claim, have the possession or control thereof.

3629. *Assessor to require a statement containing what.*

SEC. 3629. He must exact from each person a statement in writing showing separately:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person;
2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member;
3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent;
4. The county in which such property is situated, or in which it is liable to taxation;
5. An exact description of all lands, improvements, and personal property, including all vessels, steamers, and other water craft, and deposits of money or gold dust, and the names of the persons with whom such deposits are made, and the places in which they may be found;
6. All other facts required by the state board of equalization or by the assessor.

Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer need not include such property in the statement made by him, but his statement must show the name of the person or officer who made the statement in which such property is included.

(a) The original section was the same as the text. It was previously amended by act of March 30, 1871; Amendments 1873-4, 142, so as to add at the end of the first clause of the first subdivision the words "and trees, vines, growing crops, and plants while growing and rooted in the ground, except plants and trees grown in nurseries for propagation and sale," and to omit the second clause of the second subdivision.

3630. *Supervisors to furnish blank forms of statements, etc.*

SEC. 3630. The board of supervisors must furnish the assessor with "blank forms" of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows:

"I, ———, do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, own, claim, possess, or control, and which is not already assessed this year, and that I have not, in any manner whatsoever, transferred or disposed of any property, or placed any property out of said county or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement. [Amendment, approved March 24, 1874; Amendments 1873-4, 143; took effect from passage.^(a)

3631. *Statement to be filled out and returned to assessor.*

SEC. 3631. The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out.

3632. *General powers of assessors.*

SEC. 3632. Every assessor shall have power:

1. To require any person found within such assessor's respective county, to make and subscribe an affidavit, giving his name and place of residence;
2. To subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his respective county; and he may exercise this power in any county where the persons whom he desires to examine may be found, but shall have no power to require such person to appear before him in any other county than that in which the subpoena is served upon them. Every person who shall refuse to furnish the statement hereinbefore required in this chapter, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the assessor, as above provided, shall, for each and every refusal, and as often as the same is repeated, forfeit to the people of the state, the sum of one hundred dollars, in gold coin of the United States, to be recovered by action brought in their name by the respective assessor in any police or justice's court. In case such affidavit shall show the residence of the person making the same, to be in any county other than that in which it is taken, or the statement shall disclose property in any county other than that in which it is made, the assessor shall in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. One half of all moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county, and the other half may be retained by the assessor for his own use. [Amendment, approved March 24, 1874; Amendments 1873-4, 144; took effect from passage.^(b)

3633. *Property of person neglecting or refusing to give statement, how assessed.*

SEC. 3633. If any person, after demand made by the assessor, neglects or refuses to give under oath the statement herein provided for, or to comply with

(a) The original section did not have the words "that I am a resident of the county of (naming it)," nor the latter part of the section commencing with the words "this year, and that I have not, in any manner whatsoever, transferred."

(b) Original section:

SEC. 3632. The assessor may, in his discretion, sub-

pena and examine witnesses in relation to any statement; and all persons are required to testify when requested so to do by him; and in case of refusal, the judge of any court must issue a subpoena and compel a refusing witness to give testimony, and may for each refusal impose a fine not exceeding twenty dollars.

the other requirements of this title, the assessor must note the refusal on the assessment-book, opposite his name, and must make an estimate of the value of the property of such person; and the value so fixed by the assessor must not be reduced by the board of supervisors.

3634. *Accurate description of property, how obtained by assessor.*

SEC. 3634. Whenever the assessor deems it necessary to obtain an accurate description of any tract or lot of land in his county, he may require the owner or his agent to furnish the same, with any title papers he may have in his possession; and if on demand the owner or agent neglects or refuses to furnish the same, the assessor may employ the county surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein; and the expenses of such survey must be returned by the assessor to the county auditor, who must add the amount to the taxes assessed upon the property, which amount so added must, when collected by the collector of the county, be paid over to the county surveyor.

3635. *Assessment of unknown or absent owners of property.*

SEC. 3635. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property.

3636. *Same.*

SEC. 3636. If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to "unknown owners."

3637. *Property situated in another county.*

SEC. 3637. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same by mail or express, to the assessor of the proper county, who must assess the same as other taxable property therein.

3638. *Consigned property.*

SEC. 3638. All personal property consigned for sale to any person within this state from any place out of this state must be assessed as other property.

3639. *Trustees, guardians, executors and administrators.*

SEC. 3639. When a person is assessed as agent, trustee, bailee, guardian, executor or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

3640. *Holders of stock in firm or corporation.*

SEC. 3640. The owner or holder of stock in any firm or corporation, the entire capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

3641. *Property of firm or corporation assessed where situated.*

SEC. 3641. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

3642. Undistributed property of deceased persons.

SEC. 3642. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

3643. Ferries and toll bridges, where assessed.

SEC. 3643. Ferries and toll bridges must be assessed in the county where the tolls are collected.

3644. Vessels, where assessed.

SEC. 3644. All vessels of every class which are by law required to be registered must be assessed and the taxes thereon paid only in the county, or city and county, where the same are registered, enrolled, or licensed.

3645. Same.

SEC. 3645. Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this state, the owners of which reside in this state, must be assessed in this state.

3646. Boats and small craft.

SEC. 3646. All boats and small craft not required to be registered, must be assessed in the county where their owner resides.

3647. Property and money in litigation.

SEC. 3647. Money and property in litigation in possession of a county treasurer, of a court, county clerk, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes be paid thereon under the direction of the court.

3648. Property concealed, misrepresented, etc.

SEC. 3648. Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of supervisors.

3649. Property not taxed in previous year.

SEC. 3649. Any property discovered by the assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

3650. Property, how listed.

SEC. 3650. The assessor must prepare an assessment book, with appropriate headings, alphabetically arranged, in which must be listed all property within the county, and in which must be specified in separate columns under the appropriate head:

1. The name of the person to whom the property is assessed;
2. Land by township, range, section, or fractional section; and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon;
3. City and town lots, naming the city or town, and the number, block, according to the system of numbering in such city or town, and improvements thereon;

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;

5. The cash value of real estate, other than city or town lots;

6. The cash value of improvements on such real estate;

7. The cash value of city and town lots;

8. The cash value of improvements on city and town lots;

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate;

10. The cash value of all personal property, exclusive of money;

11. Amount of money;

12. The total value of all property;

13. The figure one (1), in separate columns, opposite the name of every person liable to pay a road poll tax or a poll tax;

14. Such other things as the state board of equalization may require. The state board of equalization may direct the book to be otherwise than alphabetically arranged in the city and county of San Francisco. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(a)]

An Act concerning the assessment of animals.

Approved March 30, 1872; 1871-2, 754.

Assessment of animals temporarily pasturing in any county.

SECTION 1. Whenever any person residing in any county of the state, and owning any neat cattle, horses, mules, sheep, or goats therein, shall drive the same from the county where he resides into any other county, for the purpose of temporarily pasturing the same, all such animals shall be assessed in and for the county where such owner resides, although the said animals shall not be at the time of said assessment in said county in which he may so permanently reside; and such owner shall include such animals in his assessment list, and the assessor of the county where such stock are so temporarily grazed shall list the same, with a full description of each kind and the number of the same; and for the purpose of making such list, the assessor shall have power, and it is hereby made his duty, to examine on oath the person or persons owning or having charge of such cattle, horses, mules, sheep, or goats touching their number, ownership, and to whom and in what county, if any, they have been assessed for taxation. The list made out as aforesaid by the assessor, together with a full statement of the same, shall be signed and sworn to by the person or persons owning or having in charge such stock.

Duties of assessors and treasurers.

SIC. 2. The assessor shall file a copy of said list of such stock with the county treasurer of his county, and another copy with the treasurer of the county in which the said stock was first listed and assessed for taxation. Upon filing the lists aforesaid, with the sworn statement therein that the stock specified in said lists has been pastured or used in the county mentioned therein during the grazing season, with the treasurer of the county in which it was assessed for taxation, said treasurer shall pay, on the order of the treasurer of the county in which the stock was so pastured or used, one half of the amount of taxes paid in on the said stock, less the cost of collection.

(a) The original section had fifteen subdivisions, of which the thirteenth was as follows: "13. The total value of all property after equalization by the state board." The above thirteenth was fourteenth, and

fifteenth, above fourteenth, did not have the word "state" nor the last sentence, relating to the book in the city and county of San Francisco.

SEC. 3. All acts or parts of acts in conflict with this act, so far as they are in conflict with this act, are hereby repealed.

SEC. 4. This act shall take effect from and after its passage.

An Act to regulate the assessment of migratory herds or bands of live stock, and to provide for an equitable distribution of the taxes derived therefrom.

Approved March 16, 1874; 1873-4, 376.

Assessment of migratory stock.

SECTION 1. Whenever the assessor assesses any live stock, he must demand of the person who gives him a list thereof a statement under oath, showing: first, whether such stock, or any part thereof, will, during the year for which such assessment is being made, be moved to another county for pasturage, and if such removal is to be made; second, the county to which such stock will be taken; and third, the number, kind, and value thereof; provided, that should such person, at the time of assessment, not have determined to remove such stock, and afterwards should make such removal, it shall be lawful for him to make the statement to the assessor of the county from which such stock was removed, as in this section provided, through the United States mail.

Duty of assessor.

SEC. 2. The assessor must fully note on his assessment roll, immediately below the description of the property listed to such person: first, the number and kind of stock to be removed; second, the name of the county to which such stock is to be removed; and third, the assessed value of such stock; and within ten days after making the assessment, he must transmit, by mail, to the county treasurer of the county to which such stock is to be taken, a copy of the statement provided for in section one of this act; and the treasurer must enter the same in a book to be kept by him for that purpose, which book shall be known as the assessment roll of migratory stock, and shall be open for inspection.

Collector's account.

SEC. 3. The collector must keep a separate account of all taxes collected upon the property mentioned in this act, which account must include the names of the persons, description of the property, and the counties to which such stock has been driven, and at the time of his settlement, file such account with the treasurer of his county; and the treasurer must enter the same in a book to be kept by him for that purpose.

Treasurer's duty.

SEC. 4. The treasurer receiving moneys so collected, must set apart one half of the sum collected for county purposes, for the use, respectively, of the different counties to which the stock has been sent for pasturage.

Demand.

SEC. 5. On the first Monday of February in each year, the treasurer of each county to which any list provided for in section one has been sent, must make out a demand against the county from which the list came, for one half of the tax assessed for county purposes, against the property on said list, and must transmit the same to the county treasurer of the county from which the list came, who must pay over to the treasurer making the demand, all moneys received in the county treasury, to the use of the county from which the demand came, and which had not been before paid over, accompanied with a duplicate of the statement filed by the tax collector.

How made.

SEC. 6. The demand and payment provided for in the preceding section may be made through any regularly organized express company.

Mark "paid."

SEC. 7. The treasurer receiving money and statement, as provided in the preceding section, must pay the same into the county treasury, and must mark the word "paid" on the assessment-roll opposite the name and description of property corresponding with the name and description of property included in such statement.

Examinations by assessor.

SEC. 8. The assessor must make examinations of the property listed in said roll, and must ascertain whether any live stock not on such roll has been sent or brought into his county for pasturage, and if he finds any such, must assess it at its full cash value; and in that case the fact that the same property has been assessed in another county for the same year, and that the taxes have been paid in such county, shall be no defense to any proceeding to recover the taxes assessed in the county in which such stock is found, unless it be proved that such person has complied with the provisions of section one of this act, and that the assessor has failed to make the return thereof.

Penalty for failure to make statements.

SEC. 9. Any person who drives, or causes to be driven, any live stock to another county for pasturage, and fails to make the statement provided for in section one, or who willfully fails to include in such statement the full number or value of stock so sent or driven, shall be liable to a penalty of five hundred dollars, to be recovered in the district court of the county to which said stock is sent or driven; and such suit must be instituted by the district attorney of said county in the name of the people of the State of California, upon the information of any responsible person, and one half of the penalty recovered must be paid to the person on whose information the suit was instituted.

Misdemeanor.

SEC. 10. Any officer who shall fail, neglect, or refuse to perform the duties required of him by this act, shall be guilty of a misdemeanor, and, upon conviction, shall be fined a sum of not less than fifty nor more than five hundred dollars.

Print and transmit.

SEC. 11. The state board of equalization must, immediately after the passage of this act, have it printed, and transmit twenty copies thereof to each assessor in the state.

SEC. 12. This act shall take effect from and after its passage.

An Act supplementary to the foregoing act of March 16, 1874.

Approved April 1, 1876; 1875-6, 797.

Apportionment of assessments.

SECTION 1. County treasurers to whom a list is sent from the county of Calaveras, under the provisions of the above-mentioned act, shall make out a demand against the treasurer of the county of Calaveras for such a portion of one half of the tax assessed and collected for county purposes as would have been assessed and collected at the rate of taxation in the county making the demand had the property been assessed therein.

SEC. 2. This act shall be in full force from and after its passage.

3651. *Form of assessment book.*

SEC. 3651. The form of the assessment book must be substantially as follows:

Assessment Book of the property of — County, for the year 18—, assessed to all owners and claimants, known and unknown.		Remarks.....	
		Poll tax.....	\$
		Total tax.....	\$
		Total value of all property.....	\$
		Amount of money.....	\$
		Value of personal property.....	\$
		Value of improvements on real estate assessed to persons other than the owners of the real estate	\$
		Value of improvements thereon.....	\$
		Value of city and town lots.....	\$
		Value of improvements thereon.....	\$
		Value of real estate other than city and town lots.....	\$
		Number of acres.....	
DESCRIPTION OF PROPERTY. City and town lots. Real estate other than city and town lots.	Block	Personal property: (Here may be enumerated in the space to column for number of acres.	
	Lot		
	Fraction		
	Range, E. or W.		
	Township, N. or S.		
	Section		
	Subdivision of section.....		
Residence.....			
Taxpayers' names.....			
When tax paid.....			

In the city and county of San Francisco, the form book shall be such as may be directed by the state board of equalization. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(a)

3652. *Assessment book—Assessor's oath.*

SEC. 3652. On or before the first Monday of July in each year, the assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows:

"I, —, assessor of (or deputy assessor, as the case may be) — county, do swear that between the first Monday in March and the first Monday in July, eighteen hundred and —, I have made diligent inquiry and examination to

(a) The original section did not have the sentence at the end in reference to the city and county of San Francisco.

It was previously amended by act of March 24, 1874;

Amendments 1873-4, 145, so as to read like the amendment in the text except that it had a subdivision after "Total tax" of "Total value of all property after equalization by the state board of equalization."

ascertain all the property within the county (or within the subdivision thereof assessed by me, as the case may be), subject to taxation, and that I have assessed it on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment through favor or reward."

But the failure to take or subscribe such an affidavit or any affidavit, will not in any manner affect the validity of the assessment.

3653. *Map of property assessed in cities or towns.*

SEC. 3653. The assessor must, when directed so to do by the board of supervisors, in a map book make a plan of the various blocks within any incorporated city or town, and mark thereon in each subdivision the name of the person to whom it is assessed.

3654. *Assessment and map books delivered to and kept by clerk of supervisors.*

SEC. 3654. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the clerk of the board of supervisors, who must immediately give notice thereof and of the time the board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

3655. *Statement by assessor to state board of equalization, to show what, when made.*

SEC. 3655. On the first Monday of July in each year, the assessor of each county must transmit to the state board of equalization a statement showing:

1. The several kinds of personal property;
2. The average and total value of each kind;
3. The number of live stock, number of bushels of grain, number of gallons of wines or liquors, number of pounds or tons of any article sold by the pound or ton;
4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

3656. *Penalty for failure of assessor to complete assessment book or transmit statement.*

SEC. 3656. Every assessor who fails to complete his assessment book or who fails to transmit the statement mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars, to be recovered on his official bond, for the use of the county.

3657. *Persons claiming ownership of property and desiring to be assessed.*

SEC. 3657. Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

3658. *Supervisors to furnish assessor with maps.*

SEC. 3658. The board of supervisors must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and, if surveyed under authority of the United States, the divisions and subdivisions of the survey; if held under Spanish grants, the exterior boundaries of such grants and the number of acres claimed. Maps of cities and villages, or school districts, may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund.

3659. *Lists of land sold by state to be transmitted to assessor of county where property situated.*

SEC. 3659. On or before the first Monday in March in each year the surveyor-general of the state and the tide land commissioners must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued during the year preceding, certified lists of such lands or lots, giving a description thereof by congressional divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

3660. *When assessor liable for taxes on unassessed property.*

SEC. 3660. The assessor and his sureties are liable on his official bonds for all taxes on property within the county, which, through his willful failure or neglect, is unassessed.

3661. *District attorney to prosecute assessor for unpaid taxes, when.*

SEC. 3661. The district attorney must, after the assessor completes the assessment book for the year, commence an action on the assessor's bond for the amount of taxes lost from such willful failure or neglect.

3662. *Judgment, when entered against assessor.*

SEC. 3662. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

3663. *Rolling-stock and improvements of railroads, how assessed.*

SEC. 3663. Where the railroad of a railroad corporation lies in several counties, its rolling-stock must be apportioned between them so that a portion thereof may be assessed in each county, and each county's portion must bear to the whole rolling-stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in this state. The land occupied and claimed as the right of way, with the track and all the substructures and superstructures which support the same, must be assessed as a whole, and as real estate, without separating the same into lands and improvements, at a certain sum per mile. The improvements, other than the track and the substructures and superstructures which support the same, whether situated upon land occupied and claimed as the right of way, or on other lands, must be separately assessed. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll roads, with all improvements attached to such properties, must be listed by the assessor as real estate, and as a whole, without separating the land and the improvements, either in the description or valuation of the same. [Amendment, approved March 30, 1874; Amendments 1873-4, 158; took effect sixtieth day from passage.^(a)

3664-	Added, 1880 p 13-	Amended 1883, page 65	489-2
3665-	" " " 14	" " " "	491-
3666-	" " " 15	" " " "	500
3667-	" " " 16	" " " "	501
3668-	" " " 17	" " " "	502
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II.	STATE BOARD OF EQUALIZATION.		3692

ARTICLE I.

COUNTY BOARDS OF EQUALIZATION.

3672. *Supervisors, when to equalize assessment.*

SEC. 3672. The board of supervisors of each county must meet on the first

(a) The original section was added to the code by of one sentence only, the first of the above amendment approved March 27, 1872; 1871-2, 586. It consisted

Monday of July in each year, to examine the assessment-book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the fourth Monday in July.

3673. Supervisors empowered to correct assessment.

SEC. 3673. The board has power to determine all complaints in regard to the assessed value of property, and may, except as prohibited in this title, correct any valuation by adding or deducting such sum as may be necessary to make it conform to the actual cash value.

3674. No reduction to be made unless on application of person assessed.

SEC. 3674. No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath showing the facts upon which it is claimed such reduction should be made.

3675. Examination of person assessed by supervisors for purposes of equalization.

SEC. 3675. Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

3676. Supervisors may subpoena witnesses and take evidence.

SEC. 3676. Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

3677. Assessor and deputy to attend upon hearing of application.

SEC. 3677. During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the board.

3678. County recorder to attend with abstract of titles.

SEC. 3678. The county recorder must, when required during the session, attend on the board with an abstract of all unsatisfied mortgages and trust deeds given to secure the payment of loans and other liens on record in his office.

3679. Supervisors to use information and direct entry of mortgages, etc.

SEC. 3679. The board must use the abstract and all other information it may gain from the records of the county recorder or elsewhere in equalizing the assessment of the property of the county, and may require the assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment book to the clerk of the board; but no person must be assessed under this section except a resident of the county.

3680. Preservation of evidence taken before board.

SEC. 3680. In all cases where the board either adds to, or decreases, or alters the valuation of property made by the assessor, the clerk of the board must note down and preserve, substantially, the evidence upon which such addition, decrease, or alteration was based. [*Amendment, approved March 30, 1874; Amendments 1873-4, 159; took effect sixtieth day after passage.*^(a)]

(a) The original section had an additional clause as follows:
"And upon the demand of the applicant the board must declare the legal principles it has been governed by in ascertaining the valuation adopted by it."

3681. *Supervisors may direct new assessments to be made, etc.—Notice to persons interested.*

SEC. 3681. During the session of the board, it may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries) when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the post-office or express, postpaid and addressed to the person interested, at least ten days before action taken, of the day fixed when the matter will be investigated.

3682. *Clerk of supervisors to record proceedings, alterations, etc.—Oath of clerk.*

SEC. 3682. The clerk of the board must record in a book to be kept for that purpose all changes, corrections, and orders made by the board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the board, and on or before the first Monday of August must deliver the assessment so corrected to the county auditor, and accompany the same with an affidavit thereto affixed, subscribed by him as follows:

“I, —, do swear that, as clerk of the board of supervisors of — county, I have kept correct minutes of all the acts of the board touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized.”

ARTICLE II.

STATE BOARD OF EQUALIZATION.

3692. *General powers of board.*

SEC. 3692. The powers and duties of the state board of equalization are as follows: 86-
91-4

1. To prescribe rules for its own government and for the transaction of its business;

2. To prescribe rules and regulations to govern supervisors when equalizing and assessors when assessing;

3. To make out, prepare, and enforce the use of forms in relation to the assessment of property;

4. To hold such special meetings as the chairman may direct;

5. To meet at any time between the first and third Mondays in September in each year, and at such meetings to fix the rate of state taxation;

6. To appoint a clerk, when necessary, prescribe and enforce his duties;

7. To report to the governor annually a statement showing:

First. The acreage of each county in the state that is assessed;

Second. The amount assessed per acre;

Third. The aggregate value of all town and city lots;

Fourth. The aggregate value of all real estate in the state;

Fifth. The kinds of personal property in each county, and the value of each kind;

Sixth. The aggregate value of all personal property in the state;

Seventh. Any information relative to the assessment of property and the collection of revenue;

Eighth. Such further suggestions as it shall deem proper;

8. To keep a record of all its proceedings. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(a)

3693. [SEC. 3693 was repealed by act approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.^(b)]

3694. *Equalization, how made when county auditor fails to forward statement.*

SEC. 3694. If the county auditor fails to forward to the state board of equalization the statement provided for in section 3728, the board must obtain the statement or so much thereof as is necessary from other and reliable sources. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(c)

3695. [SEC. 3695 was repealed by act approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.] ^(d) *But added 1876 p. 9-27*

3696. *Board to notify supervisors amount of tax to be levied.*

SEC. 3696. Between the first and third Mondays in September of each year the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property of the state, which, after allowing fifteen per cent. for delinquencies in, and costs of collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the legislature for state purposes. The board must immediately thereafter transmit to the board of supervisors of each county a statement of such rate, and upon its receipt, the county clerk must, in writing, notify the state board of equalization thereof. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(e)

3697. *Penalty for refusing to obey rules and regulations of board.*

SEC. 3697. Every person served with a subpoena who fails or neglects, without just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the board, or to perform the duties prescribed therein, forfeits to the state five hundred dollars, to be recovered by action in the name of the board, which action may be commenced and tried in any county of the state.

3698. *District attorney to prosecute assessor fraudulently assessing property.*

SEC. 3698. Whenever the state board of equalization is satisfied that the assessor or a deputy assessor of any county has knowingly, fraudulently, or

(a) The original section had twelve subdivisions, the first three and the last two being the same as above. The others were as follows:

4. To hold regular monthly meetings at the state capital on the second Monday in each month, and such special meetings as the chairman may direct; 5. To meet at the state capital on the third Monday in August, and remain in session until the third Monday in September; 6. At such meeting to equalize the valuation of the property of the several counties in the state, and fix the rate of state taxation; 7. To visit as a board, or by the individual members thereof, the several counties of the state for the purpose of inspecting the property and learning the value thereof; 8. To call before it or any member thereof on such visit, any officers of the county, and to require them to produce any public records in their custody; 9. To issue subpoenas for the attendance of witnesses, or for production of books before the board or any member thereof, which subpoenas may be signed by a member of the board and may be served by any person; 10. To appoint a clerk, prescribe and enforce his duties.

(b) Repealed section.

(c) SEC. 3694. Where the property is found to be assessed above or below its full cash value, the board must add to or deduct from the valuation of:

1. The real estate;
2. Improvements upon such real estate;
3. The personal property, except money;
4. The amount of money.

Such per centum, respectively, as is sufficient to raise or reduce it to the full cash value.

(d) It was amended by act of March 24, 1874; Amendments 1873-4, 147, so as to read like the original down

to and including the words "except money," and then proceeded "and solvent debts; such per centum, respectively, as is sufficient to raise or reduce it to the full cash value. In raising or reducing the valuation of personal property, the board may confine such raising or reduction to one or more kinds of personal property, not exceeding six in number."

(e) The original section after the word "must" had the words "make the equalization from any information it can obtain."

(f) Repealed section:

SEC. 3695. When the equalization among the several counties is completed, the clerk of the board must transmit to each county auditor a statement of the per centum to be added to or deducted from the valuation of the property of his county.

(g) The original section read like the section as given below, except that instead of "eighteen per cent. for delinquencies in, and cost of," it had the words "for delinquency in the."

It was amended by act of March 24, 1874; Amendments 1873-4, 147, so as to read like the section as given below, except that it had the word "twelve" instead of "eighteen."

It was again amended by act of March 30, 1874; Amendments 1873-4, 159, so as to read as follows:

SEC. 3696. At the same time the board must determine and transmit to the board of supervisors of each county the rate of state tax to be levied and collected, which, after allowing eighteen per cent. for delinquencies in, and cost of collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the legislature for state purposes.

corruptly assessed any property below its actual cash value, it must immediately inform the district attorney of such county in writing of the facts that may have come to its knowledge, with a request that such assessor or deputy assessor be prosecuted, and the district attorney must at once comply with such request.

3699. *Clerk and members of board may administer oaths.*

SEC. 3699. The clerk or any member of the board may administer and certify oaths.

[SECS. 3700 and 3701 were repealed by act approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.^(a)] *But added 1880-27 80 370*
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3702. *Expenses.*

SEC. 3702. All necessary expenses in carrying into effect the provisions of this title must be allowed the board, not to exceed annually one thousand dollars, the amount thereof to be audited and allowed by the board of examiners, and paid out of the state treasury. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(b) 86-87-

3703. [SEC. 3703 was repealed by act approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.^(c)]

3704. *Duty of board upon failure of county boards to appoint assessors, etc.*

SEC. 3704. If the board of supervisors of any county fails or refuses either:

1. To allow the assessor to appoint a sufficient number of deputies to make the assessment; or,

2. To furnish the proper books or blanks for his use; or,

3. To furnish the assessor necessary office room;

—Then the state board of equalization may, upon the application of the assessor, make the allowance, or furnish the proper books, blanks, or office room; and all the expense incurred in carrying into effect the provisions of this section must, by the secretary of the board, be certified to the controller, who must, in his next settlement with the county treasurer of any such county, require such treasurer to pay the amount out of any funds belonging to such county.

An Act to protect the county treasuries of certain counties.

Approved March 16, 1874; 1873-4, 393.

Assessors of certain counties to pay deputies.

SECTION 1. If the assessor of Siskiyou, Calaveras, Amador, or Alpine county appoints any deputies by virtue of authority derived from the state board of equalization, acting in pursuance of powers conferred on them by section three thousand seven hundred and four of the Political Code, or by virtue of authority derived from the board of supervisors of his county, acting in pursuance of powers conferred on them by section three thousand eight hundred and ninety-four of the Political Code, the compensation of such deputies must be paid by the assessor.

SEC. 2. This act must take effect and be in force from and after its passage.

3705. *State board may extend time.*

SEC. 3705. The state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county, extend, for not exceeding thirty days, the time fixed in this title for the performance of any act.

(a) Repealed sections:

SEC. 3700. The annual salary of each member of the board appointed by the governor is thirty-six hundred dollars, and the annual salary of the ex officio member is twelve hundred dollars.

SEC. 3701. The annual salary of the clerk is twenty-four hundred dollars.

(b) Original section:

SEC. 3702. Each member of the board and the secre-

tary thereof is entitled to repayment of all expenses incurred by him in traveling in the discharge of his duties, not to exceed one thousand dollars each, the amount thereof to be audited and allowed by the board of examiners and paid out of the state treasury.

(c) Repealed section:

SEC. 3703. Each member of the state board of equalization appointed by the governor must execute an official bond in the sum of ten thousand dollars.

CHAPTER V.

LEVY OF TAXES.

3713. *Amounts required for several funds.*

SEC. 3713. The state board of equalization must, for state purposes, for the twenty-eighth and twenty-ninth fiscal years, fix such an ad valorem rate of taxation upon each one hundred dollars of taxable property of this state, as will raise for the twenty-eighth fiscal year:

1. For the general fund, two million two hundred and twenty thousand dollars;
2. For the school fund, one million two hundred and one thousand dollars;
3. For the interest and sinking fund, three hundred and fifteen thousand dollars.

And for the twenty-ninth fiscal year:

1. For the general fund, one million six hundred and eight thousand dollars;
2. For the school fund, one million three hundred thousand dollars;
3. For the interest and sinking fund, three hundred and fifteen thousand dollars. [*Amendment, approved April 3, 1876; Amendments 1875-6, 60; took effect from passage.*^(a)]

3714. *Supervisors to regulate county rate of taxation.*

SEC. 3714. The board of supervisors of each county must, on the first Monday of October, fix the rate of county taxes, designating the number of cents on each hundred dollars of property levied for each fund; and must levy the state and county taxes upon the taxable property of the county.

3715. *When supervisors fail to levy such taxes, etc.*

SEC. 3715. The action of the state board of equalization, in fixing the rate of taxation for state purposes, is, in the absence of action by the board of supervisors, a valid levy of the rate so fixed, and imposes upon the auditor, tax collector and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of supervisors had made the levy at the proper time.

3716. *Tax to operate as a judgment or lien against property.*

SEC. 3716. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

3717. *Tax on personal property a lien on realty.*

SEC. 3717. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after the time the same becomes delinquent. [*Amendment, approved March 30, 1874; Amendments 1873-4, 159; took effect sixtieth day from passage.*^(b)]

(a) The original section provided for the amounts to be raised for the twenty-fourth and twenty-fifth fiscal years. Before it took effect, it was amended by act approved April 1, 1872; 1871-2, 886, so as to fix the amounts to be raised for each of those years as follows: 1. For the general fund, \$1,190,000; 2. For the school fund, \$240,000; 3. For the interest and sinking fund of 1857, \$140,000; 4. For the interest and sinking fund of 1860, \$9000; 5. For the state capitol fund, \$200,000; 6. For the military fund, \$60,000; 7. For the soldiers' bounty interest and sinking fund, \$43,000; 8. For the soldiers' relief interest and sinking fund, \$25,000; 9. For the Pacific railroad fund, \$105,000; 10. For the state normal school building fund, \$75,000; 11. For the state capitol bonds interest and sinking fund, \$35,000.

The section was again amended by act of March 30, 1874; Amendments 1873-4, 100, so as to fix the amounts to be raised for the twenty-sixth fiscal year, as follows: 1. For the general fund, \$1,788,000; 2. For the school fund, \$1,110,000; 3. For the interest and sinking fund, \$336,000. And for the twenty-seventh fiscal year: 1. For the general fund, \$1,600,000; 2. For the school fund, \$1,130,000; 3. For the interest and sinking fund, \$336,000.

(b) The original section, instead of "same becomes delinquent," had the words "personal property is assessed."

3718. *Tax on real property and tax on improvements a lien upon both.*

SEC. 3718. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

3719. *Tax for school purposes.*

SEC. 3719. The state board of equalization must levy annually at the time other state taxes are levied a tax of such number of cents on each one hundred dollars value of taxable property in the state as will produce a net sum equal to the amount reported to them by the controller as being necessary to be raised by an ad valorem tax for school purposes; and the assessment and collection of said tax shall be performed in the same manner and at the same time as other state taxes are assessed and collected. [*New section, approved March 13, 1874; Amendments 1873-4, 84; took effect from passage.*]

CHAPTER VI.

DUTIES OF THE AUDITOR IN RELATION TO REVENUE.

3727. *Auditor to enter in assessment book total valuations and acreage of county.*

SEC. 3727. The county auditor, as soon as the assessment book is delivered to him by the clerk of the board of supervisors, must proceed to add up the valuations, and enter the total valuation of each kind of property and the total valuation of all property on the assessment book. The column of acres must show the total acreage of the county.

3728. *Auditor to prepare duplicate statement, showing what.*

SEC. 3728. The auditor must, on or before the third Monday in August of each year, prepare from the "assessment book" of such year, as corrected by the board of supervisors, duplicate statements, showing in separate columns:

1. The total value of all property;
2. The value of real estate;
3. The value of the improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money;
6. The number of acres of land.

3729. *Statements transmitted to controller and board of equalization.*

SEC. 3729. The auditor must, as soon as such statements are prepared, transmit by mail or express one to the controller of state and one to the state board of equalization.

3730. *Auditor to disregard certain action of board of supervisors.*

SEC. 3730. The auditor must disregard any action of the board of supervisors which is prohibited by section 3633 of this code. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(a)]

3731. *Auditor to compute and enter taxes against property.*

SEC. 3731. The auditor must compute and enter in a separate money column in the assessment book the respective sums, in dollars and cents, rejecting the

^(a) Original section:

SEC. 3730. As soon as the auditor receives from the state board of equalization a statement of the per centum, if any, to be added to or deducted from the valuation of the property of his county, he must add to or deduct from each assessment the required per centum on the valuation thereof, as the same has been equalized by the board of supervisors, and must enter the same in a column provided with a proper heading, in the assessment book, counting any fractional sum,

when more than fifty cents, as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fraction of a dollar.

It was previously amended by act of March 24, 1874; Amendments 1873-4, 147, so as to read like the original with the addition of a clause at the end as follows: "but he shall, in all cases, disregard any action of the board of supervisors which is prohibited by section 3633 of this code."

fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes. [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(a)

3732. Delivery of copy of assessment book to collector.

SEC. 3732. On or before the fourth Monday of October he must deliver a copy of the assessment book, to be styled "duplicate assessment book," to the tax collector, with an affidavit attached thereto, and by him subscribed, as follows:

"I, ———, auditor of the county of ———, do swear that I received the assessment book of the taxable property of the county from the clerk of the board of supervisors, with his affidavit thereto affixed; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes, and acreage as required by law, and that the copy to which this affidavit is affixed is a full, true, and correct copy thereof, made in the manner prescribed by law." [*Amendment, approved April 1, 1876; Amendments 1875-6, 11; took effect immediately.*^(b)

3733. Auditor to retain original assessment book.

SEC. 3733. The original assessment book must remain in the office of the auditor.

3734. Tax collector charged with full amount of taxes levied.

SEC. 3734. On delivering the "duplicate assessment book" to the tax collector, the auditor must charge the tax collector with the full amount of the taxes levied, and forthwith transmit by mail to the controller of state a statement of the amount so charged.

3735. Auditor to verify all statements made by him.

SEC. 3735. The auditor must verify by his affidavit attached thereto, all statements made by him under the provisions of this title.

3736. Transfer of assessment book from one collector to another.

SEC. 3736. The auditor, if the "duplicate assessment book" or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax list.

3737. Penalty for failure or neglect of county auditor.

SEC. 3737. If the county auditor fails or neglects to perform the duties prescribed by sections 3728 and 3729 of the Political Code, he shall forfeit to the state five hundred dollars, to be recovered by action in the name of the state board of equalization. [*New section, approved March 24, 1874; Amendments 1873-4, 156; took effect from passage.*

3738. Duplicate assessment book may be dispensed with.

SEC. 3738. The board of supervisors of any county may, in their discretion, dispense with the making or use of any duplicate assessment book mentioned in any part of this code; and in all cases where said duplicate assessment book is referred to, it shall be lawful to use and consider the original assessment book in all the requirements of every part of this code referring to the same; and all affidavits, or other statements in reference to said duplicate assessment book, shall be substantially worded to conform to the use of the original assessment book. [*New section, approved March 24, 1874; Amendments 1873-4, 156; took effect from passage.*

(a) The original section had the word "then" before "complete;" and at the end it had the words "and the columns of total value of property in the county, as corrected under the direction of the state board of equalization."

(b) The original section had the word "corrected" before the first word "assessment," and after "affixed"

the words "and that I have corrected it and made it conform to the requirements of the state board of equalization." It did not have the concluding words "made in the manner prescribed by law."

It was amended by act of March 24, 1874; Amendments 1873-4, 148, by adding to the original the words "made in the manner prescribed by law."

An Act to amend and also to repeal certain sections of the Political Code relating to the state board of equalization.

Approved April 1, 1876; Amendments 1875-6, 11.

[The first ten sections consist of amendments to sections 352, 3650, 3651, 3692, 3694, 3696, 3702, 3730, 3731 and 3732 of the Political Code therein inserted.]

Completion of old business.

SEC. 11. The board is empowered and directed to complete the unfinished business, if any there is, of the former state board of equalization; which said board is directed to deliver to the board created by this act, all the maps, papers, and records of the office.

SEC. 12. The state board of equalization, if it deem it necessary, may have printed five hundred copies of the whole or any part of Title IX of the Political Code, and transmit five copies thereof to the county clerk of each county for distribution to the revenue officers thereof.

SEC. 13. Sections 3693, 3695, 3700, 3701 and 3703 of the Political Code are hereby repealed.

SEC. 14. This act takes effect immediately after its passage.

CHAPTER VII.

COLLECTION OF PROPERTY TAXES.

3746. *Tax collector to publish notice, specifying what.*

SEC. 3746. Within ten days after the receipt of the "duplicate assessment book," the tax collector must publish a notice specifying:

1. That taxes will be delinquent on the first Monday in January next thereafter, and that unless paid prior thereto, five per cent. will be added to the amount thereof;

2. The time and place at which payment of taxes may be made. [*Amendment, approved April 3, 1876; Amendments, 1875-6, 58; took effect from passage.*]^(a)

3747. *Taxes in San Francisco payable at collector's office.*

SEC. 3747. In the city and county of San Francisco, the notice must specify the office of the collector as the place where taxes may be paid.

3748. *In other counties notice to specify place of payment.*

SEC. 3748. In other counties the notice must specify a time and place within each township in the county when and where the collector will attend to receive payment of taxes.

3749. *Manner of publication of notice.*

SEC. 3749. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township.

3750. *Tax collector to note date of payment.*

SEC. 3750. The tax collector must mark the date of the payment of any tax in the assessment book, opposite the name of the person paying.

3751. *Receipt to be given.*

SEC. 3751. He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

3752. *Taxes of decedents, how paid.*

SEC. 3752. The probate judge must require every administrator and executor

(a) The original section was the same except that it had the words "become delinquent" instead of "be delinquent" in the second subdivision.

to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

3753. Settlement of collector with auditor, when made.

SEC. 3753. On the first Monday in each month the tax collector must settle with the auditor for all moneys collected for the state or county, and pay the same to the county treasurer, and on the same day must deliver to and file in the office of the auditor a statement, under oath, showing:

1. An account of all his transactions and receipts since his last settlement;
2. That all money collected by him as tax collector has been paid.

3754. Liability of tax collector refusing or neglecting to settle.

SEC. 3754. A tax collector refusing or neglecting for a period of five days to make the payments and settlements required in this title, is liable for the full amount of taxes charged upon the assessment-roll.

3755. Action against collector for such refusal or neglect.

SEC. 3755. The district attorney must bring suit against the tax collector and his sureties for such amount, and in case of neglect, the controller of state or the board of supervisors may require him to do so; and when the suit is commenced, no credit or allowance must be made to the collector for the taxes outstanding.

3756. When taxes are delinquent, addition thereto of five per cent.

SEC. 3756. On the first Monday in January of each year, at six o'clock P. M., all unpaid taxes are delinquent, and thereafter the tax collector must collect thereon, for the use of the county, an addition of five per cent. [*Amendment, approved January 12, 1876; Amendments 1875-6, 60; took effect from passage.*^(a)]

3757.

[SEC. 3757^(b) was repealed by act approved December 23, 1873; Amendments 1873-4, 160; took effect immediately.]

3758. Comparison of original and duplicate assessment books by collector and auditor.

SEC. 3758. On the third Monday in January of each year, in each of the counties other than San Francisco, and on the first Monday in February of each year in the city and county of San Francisco, the tax collector must attend at the office of the auditor, with the duplicate assessment book, and carefully compare the duplicate with the original assessment book, and every item marked "paid" in the former must be marked "paid" in the latter. [*Amendment, approved January 15, 1876; Amendments 1875-6, 60; took effect from passage.*^(c)]

[See, in this connection, the time prescribed for publishing the delinquent list as prescribed, post 3764.]

3759. When delinquent list must be completed.

SEC. 3759. The tax collector must, at the time specified in the preceding section, deliver to the auditor a complete "delinquent list" of all persons and property then owing taxes.

3760. All matters on assessment book, etc., to be set down in numerical or alphabetical order.

SEC. 3760. In the list so delivered must be set down in numerical or alpha-

(a) The original section did not have the words "at six o'clock P. M."

(b) Repealed section:

SEC. 3757. No taxes must be collected or received from the first to the third Monday of January, inclusive, in each year.

(c) The original section did not have the words "in each of the counties other than San Francisco, and on the first Monday in February of each year in the city and county of San Francisco."

betical order all matters and things contained in the assessment book and relating to delinquent persons or property.

3761. *Credit to be given to tax collector on final settlement, etc.*

SEC. 3761. The auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the tax collector who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him the treasurer's receipt, or if the treasurer is the collector, require from him an immediate account for any existing deficiency.

An Act in relation to moneys belonging to the state derived from taxes assessed on mortgages.

Approved March 30, 1872; 1871-2, 762.

Disposition of moneys.

SECTION 1. All moneys belonging to the state now in the hands of tax collectors, which were received as taxes on promissory notes secured by mortgage assessed and collected in the years 1870 and 1871, and all moneys that may be derived from taxes now delinquent, which were assessed on promissory notes secured by mortgage in the years 1870 and 1871, are hereby directed to be retained for the use of the several counties which levied such taxes. The tax collectors of the several counties in which such property was assessed are authorized and required to pay over all such moneys to the county treasurer in the same manner as other taxes are paid.

General fund.

SEC. 2. All moneys which by this act are remitted to the several counties in which such assessments were made shall be placed to the credit of the general fund.

SEC. 3. All laws and parts of laws inconsistent with this act are hereby repealed.

SEC. 4. This act shall be in force from and after its passage.

3762. *Tax collector charged with delinquent taxes and five per cent. additional.*

SEC. 3762. After settlement with the tax collector, as prescribed in the preceding section, the auditor must charge the tax collector then acting with the amount of taxes due on the delinquent tax list, with the five per cent. added thereto, and within three days thereafter deliver the list, duly certified, to such tax collector.

3763. *Auditor to transmit statement to controller; time when; form of.*

SEC. 3763. Within ten days after the final settlement, the auditor must transmit, by mail or express, a statement to the controller of state, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

3764. *Publication of delinquent list; when made; what to contain.*

SEC. 3764. On or before the first Monday in February, the tax collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes and costs due, opposite each name and description, with the taxes due on personal property added to taxes on real estate, where the estate is liable therefor or the several taxes are due from the same person. The expense of the publication to be a charge against the county. [Amendment, approved April 3, 1876; Amendments 1875-6, 58; took effect from passage.^(a)

(a) The original section was the same as the amendment in the text, except that it did not have the last sentence.

It was previously amended by act of January 15, 1876; Amendments 1875-6, 61, so as to insert before

"must publish" the following words, "in each of the counties other than San Francisco, and on or before the first Monday in March of each year in the city and county of San Francisco the tax collector of said city and county."

3765. *Notice of sale appended to delinquent list.*

SEC. 3765. The tax collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction.

3766. *Manner of making publication.*

SEC. 3766. The publication must be made once a week for three successive weeks, in some newspaper, or supplement thereto, published in the county; or if there is none, then by posting a copy of the list in three public places in each township.

3767. *Same.*

SEC. 3767. The publication must designate the time and place of sale.

3768. *Sale, when and where to take place.*

SEC. 3768. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the county court-house, or if in the city and county of San Francisco, in or in front of the tax collector's office, for all state and county taxes, and for all other taxes in front of the tax collector's offices in their respective towns, cities and local districts. [*Amendment, approved March 16, 1876; Amendments 1875-6, 62; took effect from passage.*^(a)]

3769. *Notice containing what to be filed with county recorder.*

SEC. 3769. The collector, as soon as he has made the publication required by sections 3764, 3765, 3766, and 3767, must file with the county recorder and county clerk respectively, a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereto, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places in each of the townships, designating the township and places therein, which affidavit is primary evidence of all the facts stated therein.

3770. *Collector to collect an additional sum to defray costs, etc.—Sum, how collected.*

SEC. 3770. The collector must collect, in addition to the taxes due on the delinquent list and five per centum added thereto, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, one half of which must go to the county and the other to the collector in full for preparing the list.

3771. *Manner of conducting sale.*

SEC. 3771. On the day fixed for the sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the collector, between the hours of ten o'clock A. M. and three P. M., must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically or in the numerical order of lots and blocks until completed.

3772. *Postponement.*

SEC. 3772. He may postpone the day of commencing the sale, or the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

3773. *Owner of property may designate what portions to be sold first, etc.*

SEC. 3773. The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate, in writing, to the tax collector, prior to the sale, what portion of the property he wishes sold, if less than the whole;

(a) The original section did not have the last clause commencing with the words "for all state and county taxes."

but if the owner or the possessor does not, then the collector may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes and costs due, including fifty cents to the collector for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this chapter, on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith of the same, the whole amount of the property assessed shall be struck off to the people of the state as the purchaser, and the duplicate certificate delivered to the county treasurer and filed by him in his office. No charge shall be made for the duplicate certificate when the state is a purchaser; and in such case the tax collector shall make an entry, "Sold to the State," on the duplicate assessment book opposite the tax, and he shall be credited with the amount thereof in his settlement, made pursuant to sections 3797, 3798 and 3799 of this code. [*Amendment, approved March 24, 1874; Amendments 1873-4, 148; took effect from passage.*^(a)]

3774. *When purchaser does not make payment on next day property to be resold.*

SEC. 3774. If the purchaser does not pay the taxes and costs before ten o'clock A. M. of the following day, the property, on the next sale day, before the regular sale, must be resold for the taxes and costs.

3775. *Bid of person once refusing to make payment not to be received.*

SEC. 3775. The bid of any person refusing to make the payment for property purchased by him must not be received on the sale of any property advertised in the delinquent list of that year.

3776. *Collector to give purchaser duplicate certificate of sale.*

SEC. 3776. After receiving the amount of the taxes and costs, the collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

3777. *Delivery of certificate.*

SEC. 3777. The certificates must be signed by the collector, and one copy delivered to the purchaser, and the other filed in the office of the county recorder.

3778. *Collector to enter in book description of land sold, etc.*

SEC. 3778. The collector, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection without fee, during office hours, when not in actual use.

3779. *Lien of state vests in purchaser; how divested.*

SEC. 3779. On filing the certificate with the county recorder the lien of the state vests in the purchaser, and is only divested by the payment to him, or to the county treasurer for his use, of the purchase-money and fifty per cent. thereon.

3780. *Redemption, time for.*

SEC. 3780. A redemption of the property sold may be made by the owner, or

(a) The original section consisted only of the first sentence. Instead of "fifty cents" it had the words "two dollars."

any party in interest, within twelve months from the date of the purchase. [*Amendment, approved January 13, 1876; Amendments 1875-6, 62; took effect immediately.*]^(a)

3781. Coin.

SEC. 3781. Redemption must be made in gold or silver coin, and when made to the county treasurer, he must credit the amount paid to the person named in the collector's certificate, and pay it on demand to the person or his assignees. [*Amendment, approved March 24, 1874; Amendments 1873-4, 157; took effect from passage.*]^(b)

3782. Treasurer to report to supervisors persons entitled to redemption.

SEC. 3782. In each report the treasurer makes to the supervisors he must name the persons entitled to redemption money, and the amount due to each.

3783. Recorder to file certificate of sale.

SEC. 3783. On receiving the certificate of sale the recorder must file it, and make an entry in a book similar to that required of the collector.

3784. When property redeemed, recorder to note in book.

SEC. 3784. On the presentation of the receipt of the person named in the certificate, or of the county treasurer for his use, of the total amount of redemption money, the recorder must mark the word "redeemed," the date, and by whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

3785. Deed given on failure to redeem.

SEC. 3785. If the property is not redeemed within the time allowed by law for its redemption, the collector, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. In counties where no fee for making said deeds is provided by law, the collector shall be entitled to receive from the purchaser three dollars for making such deed. No charge must be made by the collector for the making of any such deed where the state is the purchaser; and the acknowledgment of all of said deeds, as provided in section 3773, shall be taken by the county clerk, free of charge. [*Amendment, approved February 15, 1876; Amendments 1875-6, 62; took effect from passage.*]^(c)

3786. Recitals in deed primary evidence of what.

SEC. 3786. The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is primary evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;

^(a) The original section was the same as the amendment in the text.

It was previously amended by act of March 24, 1874; Amendments 1873-4, 157, so as to use the word "six" instead of "twelve."

^(b) The original section did not have the clause commencing with the words "reserving two and a half."

^(c) The original section was like the following amendment, except that it had "twelve" instead of "six." It did not have the words "or his successor in office" nor the proviso.

It was previously amended by act of March 24, 1874; Amendments 1873-4, 157, so as to read as follows:

SEC. 3785. If the property is not redeemed within six months from the sale, the collector, or his successor in office, must make to the purchaser or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption; provided, that in counties where no fee in making said deed is provided by law, the collector shall be entitled to receive from the purchaser three dollars for making such deed.

7. The person who executed the deed was the proper officer;

8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

3787. What recitals are conclusive evidence.

SEC. 3787. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed.

3788. Deed conveys absolute title.

SEC. 3788. The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession. Deeds to the state, of state lands sold for delinquent taxes, shall be recorded by the recorders of the several counties, as prescribed in section 3816 of this code, and a copy of said deeds, duly certified by the county recorder and acknowledged before the county clerk, shall without delay be filed in the office of the surveyor-general, and thereupon the land shall again become subject to entry and sale, in the same manner and subject to the same conditions as apply to other state lands of like character, except that the former possessors of lands thus deeded to the state, their heirs or assigns, shall be preferred purchasers thereof for three months after the deeds are filed with the surveyor-general as prescribed in this section, but the surveyor-general shall not permit an entry, nor make a sale of any lands thus deeded to the state, except upon the previous payment into the state treasury, in addition to the price of said land as compared with the price fixed for other state lands of a like character, by the person or persons proposing to make the entry or purchase, of a sum equal to the delinquent taxes, costs, and penalties, by virtue whereof the state became a purchaser of the lands thus sought to be entered or purchased. The money thus paid into the state treasury shall be distributed in the manner prescribed in section 3816 of this code. [*Amendment, approved March 9, 1876; Amendments 1875-6, 63; took effect from passage.*^(a)

3789. Assessment book, duplicate assessment book, delinquent list, prima facie evidence.

SEC. 3789. The assessment book, duplicate assessment book, or delinquent list, or a copy thereof certified by the county auditor, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with. [*Amendment, approved March 24, 1874; Amendments 1873-4, 149; took effect from passage.*^(b)

3790. Seizure and sale of personal property for taxes.

SEC. 3790. The tax collector may, after the first Monday in February in each year, in each of the counties of this state, except in the city and county of San Francisco, and may, after the first Monday in March in each year, in said city and county of San Francisco, collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent. [*Amendment, approved January 15, 1876; Amendments 1875-6, 61; took effect from passage.*^(c)

(a) The original section consisted of the first sentence alone, with the exception that it had the word "primary" instead of "prima facie."

It was previously amended by act of March 30, 1874; Amendments 1873-4, 54, so as merely to change the word "primary" into "prima facie."

(b) The original section had the word "primary" instead of "prima facie."

(c) The original section did not have the words "in each of the counties of this state, except in the city and county of San Francisco, and may after the first Monday in March in each year in said city and county of San Francisco." The amendatory act also numbered the section "3794;" but such number seems so plainly an error that the original numbering is retained with this explanation.

3791. *Manner of conducting sale, etc.*

SEC. 3791. The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage, and costs.

3792. *Same.*

SEC. 3792. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

3793. *Collector's charges for conducting sale and for seizure.*

SEC. 3793. For seizing or selling personal property, the tax collector may charge in each case the sum of three dollars, and the same mileage as is allowed by law to the sheriff of the county.

3794. *Title to such property vests in purchaser on payment, etc.*

SEC. 3794. On payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

3795. *Excess of proceeds over taxes and costs returned to owner, etc.*

SEC. 3795. All excess over the taxes, per cent., and cost of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns.

3796. *Unsold portion to be left at place of sale at risk of owner.*

SEC. 3796. The unsold portion of any property may be left at the place of sale at the risk of the owner.

3797. *Final settlement of collector with auditor.*

449 SEC. 3797. The tax collector must, annually, on the third Monday of March, attend at the office of the auditor with the delinquent list, and the auditor must then carefully compare the list with the assessments of persons and property not marked "paid" on the assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book.

3798. *Same.*

SEC. 3798. The auditor must then administer to the tax collector an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment.

3799. *Same.*

SEC. 3799. The auditor must then foot up the amount of taxes remaining unpaid, and credit the tax collector with the amount, and have a final settlement with him; and the delinquent list must remain on file in the auditor's office. In the city and county of San Francisco the auditor must charge the collector with the amount due on such list, and must return to such collector the copy of the assessment book. [*Amendment, approved April 3, 1876; Amendments 1875-6, 58; took effect from passage.*]^(a)

3800. *Collector to make certain affidavit.*

449 SEC. 3800. At the time mentioned in section 3797, the collector must make an affidavit, indorsed on the list, that the taxes not marked "Paid" have not been paid, and that he has not been able to discover any property belonging to, or in possession of, the persons liable to pay the same whereof to collect them.

3801. [SEC. 3801^(b) was repealed by act approved March 24, 1874; Amendments 1873-4, 150; took effect from passage.]

(a) The original section consisted of the first sentence alone.

(b) Repealed section:

SEC. 3801. A statement of the amount of unpaid taxes

must be filed by the auditor with the clerk of the board of supervisors, and the board may cancel all taxes which in its opinion cannot be collected, and return the statement to the auditor.

3802. [SEC. 3802^(a) was repealed by act approved April 3, 1876; Amendments 1875-6, 58; took effect from passage.]

3803. *Rate of interest on delinquent taxes.*

SEC. 3803. Interest at the rate of two per cent. per month must be collected on such delinquent taxes from the time they were first delinquent until paid.

3804. *Taxes, etc., illegally collected to be refunded.*

SEC. 3804. Any taxes, per centum and costs erroneously or illegally collected, may by the order of the board of supervisors, be refunded by the county treasurer. 19-5

3805. *When land assessed more than once.*

SEC. 3805. When the collector discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due, and make return of the facts under affidavit to the county auditor.

3806. *Land irregularly assessed, etc., not to be sold.*

SEC. 3806. If the collector discovers before the sale that on account of irregular assessment, or of any other error, any land ought not to be sold, he must not offer the same for sale; and the board of supervisors must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

3807. *What mistakes do not affect sale of property for taxes.*

SEC. 3807. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

3808. *Collection of taxes from persons removed to another county.*

SEC. 3808. If any person removes from one county to another, after being assessed on personal property, the collector of the county in which he was assessed may employ an attorney to sue for and collect the same in the assessor's name.

3809. *Same.*

SEC. 3809. On the trial a certified copy of the assessment, signed by the auditor of the county where the same was made, with the affidavit of the collector thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is primary evidence that such tax and the per centum is due, and entitles him to judgment, unless the defendant proves that the tax was paid.

3810. *Expenses of such proceeding, how paid.*

SEC. 3810. The treasurer and auditor must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do not exceed one third of the amount of the tax collected.

3811. *Validity of sale—Protest.*

SEC. 3811. Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale shall not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, shall, not less than six days before the time at which the property is advertised to be sold, deliver to the tax collector a protest, in writing, signed by the respective owner or agent, specifying the portion of the tax which he claims to be invalid, and the grounds upon which such claim is based. [New section, approved March 24, 1874; Amendments 1873-4, 150; took effect from passage.]

(a) Repealed section:

SEC. 3802. All taxes not canceled must be entered by

the auditor on the assessment book of each succeeding year, until paid.

3812. *Duty of tax collector on receiving protest.*

SEC. 3812. In case any owner of property, advertised to be sold for delinquent taxes, shall, at least six days before the time advertised for the sale to take place, deliver to the tax collector his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part—and if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded—it shall be the duty of the tax collector, either:

1. To sell the property assessed for the whole amount appearing upon the duplicate assessment book; or,

2. Withdraw the property from sale, and report the case to the state board of equalization for its direction in the premises; and in such case the board of equalization may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the collector to proceed with the sale. [*New section, approved March 24, 1874; Amendments, 1873-4, 150; took effect from passage.*]

3813. *Assessment and sale of property purchased by state.*

SEC. 3813. In case property assessed for taxes is purchased by the state, pursuant to the provisions of section 3773 of this code, it shall be assessed the next year for taxes in the same manner as if it had not been so purchased. But it shall not be exposed for sale; and the sale thereof, under such assessment, shall be adjourned until the time of redemption, under the previous sale, shall have expired. [*New section, approved March 24, 1874; Amendments 1873-4, 150; took effect from passage.*]

3814. *No sale unless directed by board of equalization.*

SEC. 3814. In case an assessment is made under the provisions of section 3813 of this code, and the lands are not redeemed from a previous sale had under section 3773, as provided by law, no sale shall be had under the assessment authorized by said section 3813, unless directed by the state board of equalization. [*New section, approved March 24, 1874; Amendments 1873-4, 150; took effect from passage.*]

3815. *Redemption of property sold to state.*

SEC. 3815. In case property is sold to the state as purchaser, pursuant to section 3773 of this code, and is subsequently assessed pursuant to section 3816 of this code, no person shall be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, cost, fees, and interest. [*New section, approved March 24, 1874; Amendments 1873-4, 150, took effect from passage.*]

3816. *Moneys received, how distributed.*

SEC. 3816. Whenever property sold to the state, pursuant to the provisions of this chapter, shall be redeemed, as herein provided, the moneys received on account of such redemption shall be distributed between the state treasurer and the county treasurer, and to the respective funds, in the same manner as if the same had been paid in the first instance to the tax collector. The county treasurer shall keep an account of such taxes so represented by such sales, and shall, on the first Monday of March in each year, make a detailed report of each account, year for year, to the state treasurer. Whenever the state shall receive from the tax collector any grant of property so sold for taxes, the same shall be recorded, at the request of the county treasurer, free of charge by the county recorder, and shall be immediately reported by the county treasurer to the board of equalization. [*New section, approved March 24, 1874; Amendments 1873-4, 150; took effect from passage.*]

CHAPTER VIII.

COLLECTION OF TAXES BY THE ASSESSOR ON CERTAIN PERSONAL PROPERTY.

3820. *When taxes on personal property must be collected by assessor.*

SEC. 3820. The assessor must collect the taxes on all personal property when, in his opinion, said taxes are not a lien upon real property sufficient to secure the payment of the taxes; provided, that in the city and county of San Francisco the tax collector shall collect such taxes at any time after the assessment. [*Amendment, approved March 24, 1874; Amendments 1873-4, 152; took effect from passage.*]^(a)

3821. *Assessor may collect such taxes by seizure and sale.*

SEC. 3821. In the case provided for in the preceding section at the time of making the assessment, or at any time before the first Monday of July, the assessor may collect the taxes by seizure and sale of any personal property owned by the person against whom the tax is assessed.

3822. *Mode of conducting such seizure and sale.*

SEC. 3822. The provisions of sections 3791, 3792, 3793, 3794, 3795, and 3796 apply to such seizure and sale.

3823. *Amounts to be collected, how determined.*

SEC. 3823. The assessor and collector are governed, as to the amount of taxes to be by him collected on personal property, by the state and county rate of the previous year. [*Amendment, approved March 24, 1874; Amendments 1873-4, 152; took effect from passage.*]^(b)

3824. *When excess of rate has been charged, such excess to be returned.*

SEC. 3824. When the rate is fixed for the year in which such collection is made, then if a sum in excess of the rate has been collected, the excess must be repaid to the person from whom the collection was made, or to his assignee.

3825. *When less than the rate has been charged, etc.*

SEC. 3825. If a sum less than the rate fixed has been collected, the deficiency must be collected as other taxes on personal property are collected.

3826. *Monthly settlement of assessor with auditor.*

SEC. 3826. The assessor, on the first Monday of each month, must make a settlement with the auditor, and must pay into the county treasury all moneys collected by him for such taxes during the preceding month, less the compensation allowed him for making such collection.

3827. *Auditor to note in assessment book amount of taxes paid.*

SEC. 3827. The auditor must, as soon as the "assessment book" for the year comes into his hands, note opposite the names of each person from whom taxes have been collected the amount thereof.

3828. *Auditor to note excesses or deficiencies in taxes paid.*

SEC. 3828. As soon as the rate of taxation for the year is fixed, the auditor must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency.

3829. *Compensation of assessor for collecting.*

SEC. 3829. For services rendered in the collection of taxes, the assessor shall receive one per cent. on the amount by him collected; provided, that all fees or commissions collected under this or any other act by the salaried officers in

(a) Original section:

SEC. 3820. The assessor must collect the taxes on movable personal property when such taxes are not a lien upon real property.

(b) The original section instead of "and collector are" had the word "is," and instead of "personal" it had the word "movable."

and for the city and county of San Francisco, shall be by said officers paid into the county treasury for the use of said city and county. [*Amendment, approved March 24, 1874; Amendments 1873-4, 153; took effect from passage.*^(a)

3830. *Present incumbents to collect.*

SEC. 3830. In every county in this state where any officer other than the assessor is charged with the collection of taxes upon personal property not a lien upon real property, such officer must, until after the expiration of the term of the present incumbent, discharge the duties cast upon the assessor under the provisions of this chapter. [*New section, approved March 27, 1872; 1871-2, 586; took effect from passage.*

CHAPTER IX.

POLL TAXES.

3839. *Persons liable to poll tax.*

SEC. 3839. Every male inhabitant of this state, over twenty-one and under sixty years of age, must annually pay a poll tax of two dollars; provided, the same be paid between the first Monday in March and the first Monday in July; but if not paid prior to the first Monday in July, then it shall be three dollars. [*Amendment, approved March 30, 1874; Amendments 1873-4, 161; took effect immediately.*^(b)

An Act to exempt firemen in Nevada, Placer, El Dorado, Alameda, and Siskiyou counties from the payment of poll tax.

Approved March 27, 1874; 1873-4, 731.

[This act, which provided for the exemption of active members of unpaid fire companies, organized in pursuance of the ordinances of the incorporated cities, towns, and villages of Nevada, Placer, El Dorado, Alameda, Santa Clara, Solano, Sonoma, and Siskiyou counties, was repealed by act approved March 15, 1876; 1875-6, 287; took effect from passage.]

An Act to authorize the board of supervisors of Santa Clara county to exempt firemen from the payment of poll taxes for county purposes.

Approved March 30, 1874; 1873-4, 825.

Firemen in Santa Clara county.

SECTION 1. The board of supervisors of the county of Santa Clara are hereby authorized to pass an order relieving all active firemen in said county from payment of any and all poll taxes for county purposes.

SEC. 2. This act shall take effect from and after its passage.

3840. *Poll tax to be collected, when.*

SEC. 3840. Poll tax must be collected by the assessors between the first Monday in March and the second Monday in January of the ensuing year. [*Amendment, approved March 30, 1874; Amendments 1873-4, 161; took effect immediately.*^(c)

3841. *County treasurer to have blank poll tax receipts printed.*

SEC. 3841. The county treasurer must, before the first Monday of March and the first Monday in July of each year, cause to be printed, respectively, of two and three dollars blank poll tax receipts, a sufficient number for the use of the assessor. [*Amendment, approved March 30, 1874; Amendments 1873-4, 161; took effect immediately.*^(d)

(a) Original section:

SEC. 3829. For services rendered in the collection of delinquent taxes the assessor must receive the same compensation as is allowed by law to the tax collector for similar services.

(b) The original section had the words "(not exempt by law)" after "age," and did not have the proviso.

(c) The original section after the words "between the" proceeded as follows: "second Monday in January and the second Monday of October in each year."

(d) Original section:

SEC. 3841. The county treasurer must, before the second Monday in January of each year, cause to be printed of blank poll tax receipts a number sufficient for the use of the assessor.

3842. *Style of blank to be changed each year.*

SEC. 3842. The style of such blanks must be changed every year.

3843. *Treasurers, duty in relation to poll tax blanks and receipt.*

SEC. 3843. The treasurer must, before the first Monday in March of each year :

1. Number and sign the two-dollar blanks, and before the first Monday in July, number and sign the three-dollar blanks.

2. At the time of signing, make an entry of the whole number thereof, and of the first and last number placed thereon, in a book by him kept for that purpose.

3. Deliver all such blanks to the auditor, and charge him therewith. [*Amendment, approved March 30, 1874; Amendments 1873-4, 161; took effect immediately.*^(a)]

3844. *Auditor to sign blank receipts and make entry of number signed.*

SEC. 3844. The auditor upon the receipt thereof must sign the same, and make in a book to be kept by him for that purpose a similar entry to that prescribed in subdivision 2 of the preceding section.

3845. *Blanks to be delivered to assessor.*

SEC. 3845. He must, at any time after the first Monday in March and the first Monday in July, upon demand, deliver to the assessor, in their order, the two and three dollar blanks, and charge him therewith. [*Amendment, approved March 30, 1874; Amendments 1873-4, 162; took effect immediately.*^(b)]

3846. *Poll tax may be collected by seizure, etc., of personal property.*

SEC. 3846. The assessor must demand payment of poll tax of every person liable therefor, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person. [*Amendment, approved March 30, 1874; Amendments 1873-4, 162; took effect immediately.*^(c)]

3847. *Seizure and sale, how conducted.*

SEC. 3847. The sale may be made after three hours' verbal notice of time and place, and the provisions of sections 3791, 3793, 3794, 3795 and 3796 apply to such seizure and sale. [*Amendment, approved March 30, 1874; Amendments 1873-4, 162; took effect immediately.*^(d)]

3848. *Debtors of persons owing poll tax to pay poll tax for such persons.*

SEC. 3848. Every person indebted to one who neglects or refuses, after demand, to pay a poll tax, becomes liable therefor, and must pay the same for such other person after service upon him by the collector of a notice in writing, stating the name of such person.

3849. *Who are debtors under the preceding section.*

SEC. 3849. Every officer authorized to draw the warrants for or to pay the salary or fees of any officer is the debtor of such officer within the meaning of the preceding section.

3850. *Debtor may charge his creditor for such poll tax paid.*

SEC. 3850. Every person paying the poll tax of another may deduct the same from any indebtedness to such other person.

(a) The original section did not have the words "At the time of signing" in the second subdivision. The first clause and the first subdivision were as follows:
SEC. 3843. The treasurer must, before the second Monday in January of each year:

1. Number and sign such blanks.

(b) Original section:

SEC. 3845. He must at any time after the second Monday in January, upon demand, deliver such blanks to the county assessor and charge him therewith.

(c) Original section:

SEC. 3846. The assessor may collect the poll tax from any person liable therefor by seizure and sale of any personal property owned by such person.

(d) Original section:

SEC. 3847. The provisions of sections 3791, 3792, 3793, 3794, 3795, and 3796, apply to such seizure and sale.

3851. *Receipt for poll tax delivered to purchaser of property sold for such tax.*

SEC. 3851. The assessor must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

3852. *Receipt only evidence of payment.*

SEC. 3852. The receipt so delivered is the only evidence of payment.

3853. *Monthly settlement of assessor with auditor for poll taxes.*

SEC. 3853. On the first Monday in each month the assessor must make oath, before the auditor, of the total amount of poll taxes collected by him during the last preceding month, and must, at the same time, settle with the auditor for the same, and pay into the county treasurer's office the total amount of poll taxes collected, less the per centum allowed for fees.

3854. *Assessors, return of receipts to auditor and yearly settlement.*

SEC. 3854. On the first Monday in July the assessor must return to the auditor all two-dollar blank poll-tax receipts received by him and not used, and pay to the treasurer the total amount collected and not before paid in, less the amount of his fees, and the auditor must deliver to him the three-dollar receipts; and on the second Monday in January of each year he must return to the auditor all the three-dollar poll-tax receipts received by him and not used, and must make final settlement with the auditor and treasurer therefor. [*Amendment, approved March 30, 1874; Amendments 1873-4, 163; took effect immediately.*^(a)

3855. *Auditor to return receipts not used to the treasurer.*

SEC. 3855. The auditor must, as soon as the settlement is made, return to the treasurer the receipts not used.

3856. *Treasurer to credit auditor with such receipts.*

SEC. 3856. The treasurer must credit the auditor with the receipts so returned, and must thereupon seal them up securely and deposit and keep them in his office.

3857. *Assessors to keep roll of persons liable for poll tax.*

SEC. 3857. The assessor must keep a roll of the names and local residence or place of business of all persons subject to or liable for poll tax, and if paid, date and amount of each payment, and if not paid, cause of non-payment; provided, that no person shall be returned as delinquent on such roll unless a personal demand has been made upon him. [*Amendment, approved March 30, 1874; Amendments 1873-4, 163; took effect immediately.*^(b)

3858. *Such roll to be returned to auditor.*

SEC. 3858. On the second Monday in January of each year the assessor must deliver to the auditor the roll so made up, and the auditor must add to the total poll tax delinquent on such roll thirty-three and one third per centum additional, and without delay deliver such list to the tax collector, and charge the collector therewith. [*Amendment, approved March 30, 1874; Amendments 1873-4, 163; took effect immediately.*^(c)

3859. [SEC. 3859^(d) was repealed by act approved March 30, 1874; Amendments 1873-4, 164; took effect immediately.]

(a) Original section.

SEC. 3854. On the second Monday in October the assessor must return to the auditor all poll tax receipts received by him and not used, and make final settlement with the auditor therefor, and pay to the treasurer the total amount collected and not before paid in, less the amount of his fees.

(b) Original section.

SEC. 3857. The assessor must keep a roll of the names of all persons subject to or liable for poll tax, and the date and amount of each payment.

(c) Original section:

SEC. 3858. On the second Monday in October in each year the officer must return to the auditor the roll so made up.

(d) Repealed section:

SEC. 3859. If any person assessed for a property tax has not paid to the assessor the poll tax due from him or for which he is liable, the auditor must note the fact upon the assessment roll before he delivers it to the collector.

3860. *Poll tax to be a lien on property, when.*

SEC. 3860. If any person, assessed for a property tax, has not paid to the assessor the poll tax due from him, or for which he is liable, it, with thirty-three and one third per cent. in addition thereto, constitutes a lien upon the property assessed to such person, to attach from the first Monday in March in each year, and must be collected in the same manner and at the same time as delinquent taxes are collected. [*Amendment, approved March 30, 1874; Amendments 1873-4, 164; took effect immediately.*^(a)]

3861. *Proceeds of poll tax, to what funds paid.*

SEC. 3861. The proceeds of the poll tax must be paid into the school fund of the county. *(On account of poll tax paid to school fund)*

An Act to provide for the disposition of the proceeds of poll taxes in the county of El Dorado.

Approved March 30, 1874; 1873-4, 941.

Poll taxes in El Dorado county.

SECTION 1. All proceeds of poll taxes received into the county treasury of El Dorado county, must be placed to the credit of the school fund of said county.

SEC. 2. This act shall take effect from and after its passage.

3862. *Compensation allowed to assessor for collecting such tax.*

SEC. 3862. The assessor, for services rendered in the collection of poll taxes, shall receive the sum of fifteen (15) per cent., and the collector, for services rendered in the collection of poll taxes on the delinquent list (including the publication), shall receive the sum of twenty-five per cent. on all delinquent poll tax collected by him; provided, that in the city and county of San Francisco, all moneys collected under the provisions of this act, by the tax collector, shall be paid into the public treasury, and belong thereto, as other public funds. [*Amendment, approved March 30, 1874; Amendments 1873-4, 164; took effect immediately.*^(b)]

CHAPTER X.

SETTLEMENTS WITH THE CONTROLLER AND PAYMENTS INTO THE STATE TREASURY.

3865. *County treasurers to settle with controller upon his order.*

SEC. 3865. The treasurers of the respective counties must at any time, upon the order of the controller and treasurer of state, settle with the controller, and pay over to the treasurer all moneys in their possession belonging to the state.

3866. *Time when certain treasurers shall make settlement.*

SEC. 3866. The treasurers of the counties of Amador, Alameda, Contra Costa, Calaveras, El Dorado, Nevada, Placer, Sierra, Solano, Yolo, San Francisco, Sacramento, San Joaquin, Santa Clara, Tuolumne, and Yuba, respectively, must, between the fifteenth and thirtieth days of January, April, July, and October of each year, and the county treasurers of the counties of Humboldt, Del Norte, and Modoc must, between the fifteenth and thirtieth days of October and April in each year, and the county treasurers of other counties of this state must, between the fifteenth and thirtieth days of January and June, respectively, in each year, proceed to the state capitol and settle in full with the controller of state, and pay over, in cash, to the treasurer of state, all funds

(a) Original section:

Sec. 3860. The amount of the poll tax, with fifty per cent. in addition thereto, constitutes from the second Monday in October a lien upon the property assessed to such person, and must be collected in the same manner and at the same time as taxes upon his property are collected.

(b) Original section:

SEC. 3862. The assessor, for services rendered in the collection of poll taxes, must receive the same compensation as is allowed by law to tax collectors or assessors for similar purposes.

which have come into their hands as county treasurers before the close of business at the end of the previous month. If sufficient property tax has not been reported by the auditor to pay all charges and commissions allowed by law, the controller shall defer the settlement until the next regular settlement. No mileage shall be allowed any treasurer for any deferred settlement. [*Amendment, approved March 30, 1876; Amendments 1875-6, 64; took effect sixtieth day after passage.*]^(a)

3867. Treasurers neglecting to settle; penalty.

SEC. 3867. Every county treasurer who neglects or refuses to appear at the office of the controller and treasurer at the times specified in this chapter, and then and there to settle and make payment as required by this chapter, forfeits all fees, percentage, and mileage which would have otherwise been due him on such settlement; and the controller is required to withhold all such fees, percentage, and mileage, and require the same to be paid into the treasury for the use and benefit of the state.

3868. Settlement of county auditors with controller.

SEC. 3868. The auditor of each county, between the first and fifteenth day of each month in which the treasurer of his county is required to settle with the controller, must make in duplicate and verify by his affidavit a report to the controller of state, showing specifically the amount due the state from each particular source of revenue at the close of business on the last day of the preceding month.

3869. Auditor to transmit report to controller by mail.

SEC. 3869. The auditor must at once transmit by mail or express to the controller one copy of the report, and must deliver the other copy to the treasurer of his county.

3870. Failure of auditor to make report; penalty.

SEC. 3870. Every auditor who fails to make and transmit the report required by this chapter, or any report or statement required by this title, forfeits all compensation which would be otherwise due him from the state; and the controller is required to withhold such compensation.

3871. Controller to deduct fees and mileage, etc., on settlement.

SEC. 3871. In the settlement the controller must deduct the commissions and mileage allowed to the county treasurer for his services, the state's portion of the repayments made under section 3824, and any other amount due the county or the officers thereof.

3872. Manner of making payments into state treasury.

SEC. 3872. The manner of making payments into the state treasury is prescribed by sections 433, 434, 452, and 453 of this code.

3873. Controller's statement to contain what.

SEC. 3873. The controller must, after the treasurer has made settlement and payment, enter upon each copy of the auditor's report a statement showing:

1. The amount of money by the county treasurer paid into the state treasury;
2. The amount deducted for commissions and other allowances;

—And must then return one copy of the report to the county treasurer.

3874. County treasurer to file controller's statement with auditor.

SEC. 3874. The county treasurer must file with the auditor of his county the copy returned to him by the controller.

(a) The original section had the word "July" instead of "June." It did not have the last two sentences commencing with the words, "if sufficient property tax."

It was previously amended by act of March 30, 1874; Amendments 1873-4, 165, by inserting the word "June" instead of "July" in both places where that word occurs, and by adding the last two sentences.

3875. *Auditor to make certain entries.*

SEC. 3875. The auditor must then make the proper entries in his account with the treasurer.

3876. *Rate of mileage allowed treasurer.*

SEC. 3876. The controller must, in the settlement, allow the treasurer for mileage at the rate of forty cents per mile from the county seat to the capital, such mileage not to exceed at any settlement one hundred dollars.

3877. *Controller may examine books of any revenue officer.*

SEC. 3877. The controller may examine the books of any officer charged with the collection and receipt of state taxes.

3878. *When revenue officer guilty of defrauding, district attorney to prosecute.*

SEC. 3878. If he believes any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, he must direct the district attorney or other counsel to prosecute the delinquent.

3879. *Controller may designate county in which action to be tried.*

SEC. 3879. When any law in relation to the revenue of the state has been so far violated as to require the prosecution of the offender for a criminal offense, or proceedings against him by civil action, the controller may designate the county in which the prosecution or proceeding may be had.

3880. *Other counsel may be employed.*

SEC. 3880. The controller or attorney-general may employ other counsel than the district attorney, and the expenses must be audited by the board of examiners and be paid out of the state treasury.

CHAPTER XI.

MISCELLANEOUS PROVISIONS.

3881. *Omissions, errors and defects in form of assessment book, how corrected.*

SEC. 3881. Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the written consent of the district attorney, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes and after the original assessment was made. In the city and county of San Francisco, the written consent of the city and county attorney shall have the same force and effect as the written consent of the district attorney. [*Amendment, approved April 3, 1876; Amendments 1875-6, 58; took effect from passage.*^(a)]

3882. *Omissions, etc., in delinquent lists, how corrected.*

SEC. 3882. When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

3883. *Publication of corrected delinquent lists, etc.*

SEC. 3883. The publication must be made in the same manner as the original publication, and for not less than one week.

3884. *Initial letters, abbreviations, and figures.*

SEC. 3884. In the assessment of land, advertisement, and sale thereof for taxes, initial letters, abbreviations, and figures may be used to designate the township, range, section, or parts of section.

(a) Original section:

SEC. 3881. Omissions, errors, or defect in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with

the consent of the district attorney, be supplied or corrected by the assessor at any time within one year after the original assessment was made.

3885. *No assessment illegal on account of informality, etc.*

SEC. 3885. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

3886. *Fines, forfeitures, penalties, etc., paid into county treasury.*

SEC. 3886. The fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

3887. *Mortgaged or pledged personal property deemed property of person in possession.*

SEC. 3887. Personal property, mortgaged or pledged, is deemed the property of the person in possession, and the mortgagor or lessor of real estate is liable for the taxes thereon.

3888. *Taxes payable only in gold or silver coin—Exception.*

SEC. 3888. Taxes must be paid in legal coin of the United States. A tax levied for a special purpose may be paid in such funds as may be directed.

3889. *Annual settlements of assessors, district attorneys, and treasurers with auditor.*

SEC. 3889. Every assessor, district attorney, and county treasurer must, annually, on the first Monday of January, make a settlement with the county auditor of all transactions connected with the revenue for the previous year.

3890. *Officers to perform only duties pertaining to their own office.*

SEC. 3890. The treasurer, tax collector, assessor, clerk of the board of supervisors, and each member of the board, must separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this title.

3891. *When this title takes effect.*

SEC. 3891. With relation to the acts passed at the present session of the legislature, the provisions of this title must, after this title takes effect, be construed as though this code had been passed and approved on the last day of the present session. But the provisions of this section do not apply to any act expressly amendatory of either of the codes, or putting into effect any part of either; nor to an act approved March sixteenth, eighteen hundred and seventy-two, entitled An Act to put into immediate effect certain parts of the Political and Penal Codes; nor to an act approved March twenty-second, eighteen hundred and seventy-two, entitled An Act to put into effect certain parts of the codes and provide for their publication.

3892. *Saving clause.*

SEC. 3892. All taxes assessed before this code takes effect must be collected under the laws in force at the time the assessment was made, and in the same manner as if this code had not been passed.

3893. *Compensation of assessor and auditor for extra services.*

SEC. 3893. The board of supervisors of each county must make to the assessor and auditor thereof a reasonable allowance, not to exceed eight cents per folio, for making the statements required by sections 3655 and 3728, and for making the duplicate assessment book mentioned in section 3732 of the Political Code.

3894. *Deputies for assessors.*

SEC. 3894. The board of supervisors of each county in this state must allow the assessor thereof such a number of deputies, to be appointed by him in addition to the number now fixed, or where no deputies are now allowed, so many deputies as will, in the judgment of the board, enable the assessor to complete the assessment within the time prescribed by law.

[As to deputy assessors appointed in Siskiyou, Calaveras, Amador or Alpine

county under authority of the above section, see act of March 16, 1874, given ante, 3704.]

3895. *Compensation of deputies.*

SEC. 3895. The board must fix the compensation of the deputies so allowed; and such compensation must be paid out of the general fund in the county treasury. The compensation must not exceed five dollars per day for each deputy for the time actually engaged; nor must any allowance be made but for work done between the first Monday in March and the first Monday in July of each year.

[The above sections, 3894 and 3895, were made applicable to Humboldt county by special act of March 28, 1876; 1875-6, 511; to take effect the first Monday in March, 1877.]

3896. *State board may dispense with duplicate book.*

SEC. 3896. The state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book shall perform all the offices of such duplicate, and shall have like force and effect.

3897. *Action to recover property bought by state.*

SEC. 3897. Whenever the state shall become the purchaser of property sold for taxes, and shall receive a grant of the same, the state board of equalization may direct the district attorney of the county, or the attorney-general, to bring an action to recover possession of the same. In case of judgment for the recovery of the same, or of any part thereof, the board of equalization may order the property so recovered to be sold by the county treasurer, under such regulations and on such terms as they may prescribe, and a grant from the people of the state, executed by the county treasurer to the purchaser, reciting the facts necessary to authorize such sale and conveyance, shall convey all the interest of the state in such property, and be prima facie evidence of such facts. But no bid shall be received at such sale for less than twice the amount of all the taxes levied upon such property, and of all interest, cost, and expenses, up to the date of such sale. [New section, approved March 24, 1874; Amendments 1873-4, 153; took effect from passage.]

3898. *Proceeds of sale, where paid.*

SEC. 3898. In case sales are made under the provisions of the next preceding section, the proceeds of such sale shall be paid into the county treasury. The treasurer shall retain and distribute to the respective funds the portion belonging to the county, and shall pay the balance to the state treasurer, who must place it in the general fund. The attorney and counsel fees, costs, and expenses of the litigation for the recovery of the property, and of sales by the same, when audited by the board of examiners, must be paid out of the general fund; provided that the allowance in any one case shall not exceed the amount of said balance in such case. [New section, approved March 24, 1874; Amendments 1873-4, 153; took effect from passage.]

3899. *Collection of taxes by action, when.*

SEC. 3899. The controller may, at any time after a delinquent list has been delivered to a collector, direct such collector not to proceed in the collection of any tax on said list amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the collector, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the controller a certified copy of the entries upon the delinquent list relative to such tax; and the tax collector, or the controller, in case the tax collector refuses or neglects for

fifteen days after being directed to bring suit for collection by the controller, may proceed, by civil action in the proper court, and in the name of the people of the State of California, to collect such tax and costs. [*New section, approved March 24, 1874; Amendments 1873-4, 153; took effect from passage.*]

3900. *Complaint in action for taxes.*

SEC. 3900. In such action, a complaint in the following form is sufficient :

(Title of court.)

The People of the State of California

vs.

(Naming the defendant.)

Plaintiff avers that the defendant is indebted to plaintiff in the sum of \$—, state and county taxes for the fiscal year 18—, with five per cent. added for the non-payment of such taxes, and — dollars, costs of collection, to date. Plaintiff demands judgment for said several sums, and prays that an attachment may issue in form as prescribed in section five hundred and forty of the Code of Civil Procedure.

(Signed by the tax collector, or controller, or his attorney.)

On the filing of such complaint, the clerk must issue the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil actions. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent. on the amount of the tax. In such action, the certified copy mentioned in the preceding section, made by the collector and delivered to the controller, is prima facie evidence that the person against whose property the tax was levied is indebted to the people of the State of California in the amount of such tax. In case of payment of any such taxes after suit as above mentioned shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the county treasurer of the county in which such taxes are due, whereupon the treasurer, after distributing to the several funds of the county the portions belonging to it, and paying to the controller or his attorney the portion received as attorney's fees, and other costs, must pay the remainder to the state treasurer at the times and in the manner prescribed by law for the payment of other state taxes. [*New section, approved March 24, 1874; Amendments 1873-4, 153; took effect from passage.*]

[The amendatory act of March 24, 1874 (Amendments 1873-4, 143), from which the foregoing amendments of Secs. 3630, 3632, 3651, 3693, 3696, 3730, 3732, 3773, 3789; the repeal of 3801; the added sections 3811, 3812, 3813, 3814, 3815, 3816; amendments to 3820, 3823, 3829; the added sections 3897, 3898, 3899, 3900; amendments to 3737; added section 3738; and amendments to 3780, 3781 and 3785, were taken, had a separate section, referring specially to that act, as follows:]

SEC. 16. The state board of examiners are hereby directed to have five hundred copies of this act printed in pamphlet form, and to transmit by express five copies thereof to the county clerk of each county, for distribution to the revenue officers thereof.

PART IV.

OF THE GOVERNMENT OF COUNTIES, CITIES, AND TOWNS.

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TITLE I.

Of Counties.

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CHAPTER I.

COUNTY BOUNDARIES AND COUNTY SEATS.

3901. *County defined.*

SEC. 3901. A county is the largest political division of the state having corporate powers.

3902. *Number of counties in the state.*

SEC. 3902. This state is divided into counties, named, bounded, and constituted as provided in this title.

3903. *Due courses defined.*

SEC. 3903. In describing courses the words "north," "south," "east," and "west," mean true courses, and refer to the true meridian unless otherwise declared.

3904. *Other courses defined.*

SEC. 3904. The words "northerly," "southerly," "easterly," and "westerly," mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects.

3905. *To, on, along, and with mountain ridge.*

SEC. 3905. The words "to," "on," "along," "with," or "by" a mountain or ridge, mean summit point, or summit line, unless otherwise expressed.

3906. *To, on, along, with, by, up, or down a creek, defined.*

SEC. 3906. The words "to," "by," "along," "with," "in," "up," or "down" a creek, river, slough, strait, or bay, mean the middle of the main channel thereof, unless otherwise expressed.

3907. *In, to, or from ocean shore.*

SEC. 3907. The words "in," "to," or "from" the ocean shore mean a point three miles from shore. The words "along," "with," "by," or "on" the ocean shore, mean on a line parallel with and three miles from the shore.

3908. *Mouth of creek defined.*

SEC. 3908. The mouth of a creek, river, or slough which empties into another creek, river, or slough, is the point where the middle of the channels intersect.

DEL NORTE.

3909. *Del Norte.*

SEC. 3909. Situated in the northwest corner of the state, beginning at a point in the Pacific ocean on the forty-second parallel of north latitude, being southern line of Oregon; thence southerly, by ocean shore, to a point one mile south of the mouth of the Klamath river, forming southwest corner; thence easterly, on a line parallel with Klamath river to a point one mile south of the mouth of Blue creek; thence northeasterly to Siskiyou mountains; thence easterly, following the ridge that divides the waters of Clear creek from the waters of Dillon's creek, to Klamath river, at a point equidistant from the mouths of said creeks; thence across Klamath river and east to the summit of Salmon mountains, forming the southeast corner; thence northerly in a direct line to the head of the cañon on said river, about five miles above the mouth of Indian creek; thence north, crossing Klamath river, to a point on the forty-second parallel of north latitude, forming northeast corner; thence west to the place of beginning.

County seat—Crescent city.

KLAMATH.

3910. *Klamath.*

SEC. 3910. Beginning at southwest corner of Del Norte, as established in section 3909; thence southerly, by ocean shore, to a point west from the mouth of Mad river, forming southwest corner; thence east to a point in Trinity river, which forms common corner of Humboldt, Klamath, and Trinity; thence northeasterly to and along Scott's mountain to its point of intersection with the ridge dividing the waters which flow into Scott's, Shasta, and Sacramento rivers on the north from the waters which flow into Salmon and Klamath rivers on the south, forming the common corner of Siskiyou, Klamath, and Trinity; thence northerly to and along the last-mentioned ridge to the southeast corner of Del Norte, as established in section 3909; thence westerly along the southern line of Del Norte to the place of beginning.

County seat—Orleans bar.

An Act to annex the territory comprised in the present county of Klamath to the counties of Humboldt and Siskiyou.

Approved March 28, 1874; 1873-4, 755.

Special election.

SECTION 1. The board of supervisors of Siskiyou county must meet in Yreka, the county seat of said county, on or before Saturday, the second day of May, in the year eighteen hundred and seventy-four, and issue their proclamation ordering an election to be held on Saturday, the thirtieth day of May, eighteen hundred and seventy-four, at which the qualified electors of the county may vote on the question of the annexation to Siskiyou county of that portion of Klamath county hereinafter specified in this act, and on the conditions hereinafter specified.

Ballots.

SEC. 2. Voters who desire the annexation to Siskiyou county of the portion of Klamath county herein described, must vote a legal ballot, with the following inscription printed or written thereon: "Annexation, yes." And voters who oppose the annexation to Siskiyou county of such portion of Klamath county, must vote a legal ballot, with the inscription printed or written thereon: "Annexation, no."

How conducted.

SEC. 3. The laws which apply to and govern general elections, shall apply to and govern the elections herein provided for, except as is in this section other-

wise directed. The county clerk shall procure, if practicable, a number of copies of the great register of the county prepared and printed for the general election in the year eighteen hundred and seventy-three, equal to the number of precincts in the county, and shall cause one copy of such great register to be delivered to the election board of each precinct, and such delivery of copies of the great register to the election boards of the several precincts shall be held to be a full compliance with the law in reference to providing election boards with copies of the great register. And the clerk, for the purpose of obtaining such number of copies of such great register as by this act is made necessary, is authorized and directed to open the election returns of the general and judicial elections of the year eighteen hundred and seventy-three, now on file in his office, and take therefrom such number of copies of the great register, constituting a part of such election returns, as he may require; and such copies of the great register shall be valid for this election. If enough copies of the said great register cannot in this way nor in any other manner be obtained to supply each precinct with one copy thereof, the clerk must make, and cause to be printed, precinct poll lists of like character as those required by the registration act in force prior to the enactment of the election law of the Political Code. Such precinct poll lists, if made, must be distributed to the election boards of the several precincts, and in the absence of copies of the great register, shall take the place thereof.

Returns and canvass.

SEC. 4. The officers of election must make the returns of election in the manner and within the time prescribed for making the returns of general elections, and the board of supervisors, acting as a board of canvassers, must canvass the returns in the manner and within the time prescribed for canvassing the returns of general elections. If it shall be found that a majority of the legal voters voting at such election have voted for annexation, the board of supervisors must, within five days after canvassing the returns, make out two several statements of the result, one of which they must forward by mail to the board of supervisors of Klamath county, and the other to the board of supervisors of Humboldt county, and thirty days after the canvassing of the returns of the election, if a majority of the legal voters voting at such election shall have voted for annexation, the organization and government of Klamath county shall be abandoned, and such portions of the territory heretofore constituting said county shall be annexed to Humboldt and Siskiyou counties, respectively, on such conditions as are hereinafter defined, and the provisions of the subsequent sections of this act shall be in force from and after that date.

Territory described.

SEC. 5. All that part of the territory now composing the county of Klamath, situate and lying north and easterly of the following line and boundary, to wit: commencing at the point where the present boundary of Klamath and Del Norte crosses the Klamath river; thence running easterly in a direct line to where the Salmon river enters the Klamath river; thence in a southerly direction, following the ridge of the mountain that divides the waters of the Salmon and its tributaries from the waters of Klamath and Trinity rivers, and their tributaries, to the northern boundary-line of Trinity county; shall be and compose a part of the county of Siskiyou, and shall be within the jurisdiction thereof, and of the courts and officers of said county; and all that part of the territory now composing the county of Klamath, situate and lying south and westerly of the above-described boundary and line, shall be a part of Humboldt county, and within the jurisdiction thereof, and of the courts and officers of the county.

Indebtedness.

SEC. 6. The board of commissioners, appointed in accordance with the provisions of this act, are hereby authorized and required, immediately after their appointment, to ascertain and apportion the then outstanding and bona fide indebtedness of the county of Klamath. A majority of said commissioners may transact the business and determine the action of said board. Said board of commissioners, after ascertaining the said indebtedness, shall apportion the same between the counties of Humboldt and Siskiyou, in proportion to the assessed value of property annexed to them respectively. Said board of commissioners shall certify the amount of said indebtedness so apportioned to the boards of supervisors of said counties of Siskiyou and Humboldt, respectively, and the part of said indebtedness apportioned and certified to the county of Humboldt shall be and remain a charge upon said county, and the same shall be paid by the board of supervisors thereof; and the part of said indebtedness apportioned and certified to the county of Siskiyou shall be and remain a charge upon said county, and shall be paid by the board of supervisors thereof, and said indebtedness, so apportioned, shall in all things be as valid and binding against and upon said counties of Humboldt and Siskiyou, as if the same had been originally authorized and incurred by said counties, or by the proper and authorized officers thereof.

Tax therefor.

SEC. 7. The board of supervisors of the county of Humboldt, and the board of supervisors of the county of Siskiyou, each is hereby authorized to levy a tax upon the taxable property of the county, not exceeding ten cents on each one hundred dollars value per annum, for the purpose of paying the indebtedness assumed under the provisions of this act. The said tax shall be assessed, levied, and collected at the same time, in the same manner, and by the same officers, as other county taxes are assessed, levied, and collected. The funds raised by such tax shall be set apart and used by said respective boards of supervisors only for the payment of the principal and interest of said assumed indebtedness.

Records.

SEC. 8. The county clerk of Klamath county shall, immediately after the board of supervisors of said county shall have received notice from the board of supervisors of Siskiyou county, that the majority of the legal voters, voting on the question of the annexation of a portion of Klamath county to Siskiyou county, voted in favor of such annexation, transcribe into proper books of record all the records of the new county of Klamath, relating to or evidencing the titles to the lands embraced within the territory annexed by this act to the county of Siskiyou, for which he shall receive as full compensation, twenty cents per folio; one half of which shall be paid by the county of Siskiyou, and the other one half by the county of Humboldt; said amounts to be allowed and paid by said counties respectively, as other county charges are allowed and paid.

Originals.

SEC. 9. After transcribing the records, as provided for in the preceding section, the said county clerk of Klamath county must deposit with the county recorder of Humboldt county the original books of record of the county of Klamath, relating to the titles of lands therein. The transcript provided for in the preceding section shall be certified to as correct by the said county clerk, and shall be received as prima facie evidence of the contents thereof.

Suits.

SEC. 10. All suits now pending in the district, county, or probate courts, of

Klamath county, shall be transferred, by the order of the judge thereof, to the district, county, and probate courts of the counties of Humboldt or Siskiyou.

Board of commissioners.

SEC. 11. There shall be a board of commissioners, to consist of four persons, electors, two of whom shall be appointed by the board of supervisors of Humboldt county, and two by the board of supervisors of Siskiyou, who shall have and execute the powers conferred by section six of this act. Each county shall pay its own commissioners such sums as the board of supervisors shall deem just.

Sale of county property.

SEC. 12. The board of supervisors of Klamath county must sell at auction, to the highest bidder or bidders, for cash, and within thirty days after the appointment of the commissioners provided for in section eleven of this act, all the county property of said Klamath county, both real and personal; and the board of supervisors of said county, upon the sale of any real estate by authority of this section, is hereby authorized and empowered to make, execute, and deliver, in their official capacity, the necessary conveyances for such real estate. The money arising from the sale of said property must be applied by said board of supervisors of said Klamath county to the payment of the indebtedness of the county.

Assessment lists.

SEC. 13. The assessor and auditor of Klamath county must meet immediately on the annexation of the territory composing said county to the counties of Humboldt and Siskiyou, transmit the assessment lists containing the assessment of the property of the county for the revenue year eighteen hundred and seventy-four-five, and all books and papers in their possession pertaining thereto, to the county auditors of the counties of Humboldt and Siskiyou; the assessment lists containing the assessment of the property in the part of Klamath county annexed to Humboldt county, and the other papers and books pertaining thereto, to the county auditor of said county, and the assessment lists containing the assessment of the property in the part of Klamath county annexed to Siskiyou county, and the other papers and books pertaining thereto, to the county auditor of said county. Said assessor and auditor must certify under oath to the genuineness of all papers transmitted under the provisions of this section; and the assessment of the property of Klamath county for the revenue year eighteen hundred and seventy-four-five, made by the assessor of said county and transmitted to the auditors of Humboldt and Siskiyou counties respectively, as provided in this section, shall be as valid as if made by the assessors of said counties respectively.

Compensation.

SEC. 14. The board of supervisors of Siskiyou county must allow the county clerk of said county, for the services he may perform in connection with the election herein provided for, such compensation as they shall deem proper and just, and the sums they may allow shall be in addition to the fees and compensations the clerk is allowed by law to appropriate to his own use.

Salary.

SEC. 15. In the event of the annexation of any portion of the territory of the new county of Klamath to the county of Humboldt, as provided by this act, the assessor of the county of Humboldt shall, in addition to the salary and fees now allowed by law, receive the sum of six hundred dollars per annum, after the first Monday in March, A. D. eighteen hundred and seventy-five.

SEC. 16. This act shall take effect and be in force from and after its passage.

An Act amendatory of and supplementary to the foregoing act of March 28, 1874.

Approved March 31, 1876; 1875-6, 603.

Supervisors to appoint commissioners; same, when to meet.

SECTION 1. The board of supervisors of the counties of Humboldt and Siskiyou are directed, at their first regular meetings of said board after the passage of this act, to appoint two commissioners each, as provided in section eleven of the act to which this act is amendatory and supplementary, whose duty it shall be to meet at Orleans bar on the fifth day of June, A. D. eighteen hundred and seventy-six, and do and perform all duties required of them by the provisions of this act and the act to which this is amendatory and supplementary, not inconsistent with the provisions of this act; provided, that if the commissioners of either of said counties fail to meet as herein provided, and the commissioners from the other county shall be in attendance at said time and place, then the county being in default shall pay to the county not so in default all expenses incurred by reason thereof.

When failure to agree.

SEC. 2. If said commissioners fail to agree, they shall at once choose some disinterested person, who shall cast the deciding vote upon such matters as to which they shall so fail to agree; provided, that if said commissioners fail to agree as to the person herein authorized to be chosen, they shall certify the fact to the district judge of the eighth judicial district, who shall appoint another commissioner, who shall cast the deciding vote as aforesaid; and provided that if said commissioners shall, from any cause, fail to meet as herein provided, they shall then meet on the succeeding second Monday of August, A. D. eighteen hundred and seventy-six, unless a shorter [time] be agreed upon by the boards of said counties.

Commissioners to sell county property.

SEC. 3. The commissioners must sell at auction, to the highest bidder or bidders, for cash, all of the county property of the said Klamath county, both personal and real, as soon after their meeting and organizing as they shall deem expedient, and they are hereby authorized and empowered, in their official capacity, to execute deeds and bills of sale for all property so sold, which shall in all respects be a valid conveyance thereof.

Treasurer of Klamath to pay over moneys.

SEC. 4. P. W. Wasmuth, the treasurer of Klamath county, shall, upon the meeting and organizing of the commission herein provided, make an exhibit of the amount of all moneys and property in his custody or under his control as such treasurer, to said commissioners, also of all outstanding and bona fide indebtedness of said Klamath county. Such exhibit shall be by said P. W. Wasmuth fully explained to the commissioners, and they may examine the said P. W. Wasmuth, or any other person or persons, on oath, or the books or papers, touching any or all of said matters. Said commissioners shall thereupon proceed to ascertain the amount of moneys belonging to Klamath county which is in the possession or under the control of said P. W. Wasmuth. The commissioners shall allow to P. W. Wasmuth two per cent. on all moneys he may have in his possession belonging to said Klamath county, as full compensation for all services performed by him as treasurer of said county. P. W. Wasmuth is hereby ordered to pay over to said commissioners, upon their receipt, all of said moneys, less the amount allowed by the said commissioners as herein provided.

Apportionment of indebtedness.

SEC. 5. Said commissioners shall ascertain and apportion the assets of said Klamath county in the same manner as provided for the apportionment of the

indebtedness of said county in section six of the act to which this act is amendatory and supplementary. The commissioners shall pay over to the county treasurer of their respective counties the sums so apportioned, which shall be set apart by the said counties for the payment of the principal and interest of said assumed indebtedness of Klamath county.

Transfer of actions, records, etc., to Humboldt county.

SEC. 6. All suits and proceedings, of whatever kind or nature, now or at any time pending in the district, county or probate courts of Klamath county, and all suits, judgments, orders, and proceedings, of whatever kind or nature, heretofore at any time had or determined in or by any of said courts, which have not been already transferred to some other county, are hereby transferred to the appropriate courts of Humboldt county, which last-named courts shall have the same and as ample jurisdiction thereof as if such suits and proceedings had been originally commenced and such judgments and orders had been originally made in said courts; and all of the records of said courts not heretofore transferred to some other court, shall be delivered to the county clerk of Humboldt county by the present custodians thereof; and the clerk of Humboldt county shall have the same power and perform the same duties touching all suits, judgments, orders, and proceedings originally had in said courts of Humboldt county.

Allowance to assessor of Klamath.

SEC. 7. The board of supervisors of Humboldt county and the board of supervisors of Siskiyou county shall allow J. Nally, the assessor of Klamath county, such sums as he shall be entitled to for services performed in assessing the territory of Klamath county, during the years A. D. eighteen hundred and seventy-four and five, and the commissioners herein provided for shall certify to their respective boards of supervisors such amount as, in their judgment, they shall find the said assessor entitled to; provided, that the sums so allowed by the said board of supervisors shall not exceed in the aggregate the salary allowed by law to said assessors for any one year.

SEC. 8. The said commissioners are hereby authorized and fully empowered to do all acts necessary to carry into effect the provisions of this act, and the act to which this is supplementary and amendatory.

Supervisors of Humboldt and Siskiyou to levy tax.

SEC. 9. Section seven of the act to which this is amendatory and supplementary is amended to read as follows: Section 7. The board of supervisors of Humboldt, and the board of supervisors of Siskiyou, each is hereby authorized to levy a tax upon the taxable property of the county, not exceeding ten cents nor less than five cents on each one hundred dollars value per annum, for the purpose of paying the indebtedness assumed under this act. The said tax shall be assessed, levied, and collected at the same time, in the same manner, and by the same officers as other county taxes are assessed, levied, and collected. The funds raised by such tax shall be set apart and used by said respective boards of supervisors only for the payment of the principal and interest of said assumed indebtedness.

SEC. 10. All provisions in the act to which this is amendatory and supplementary, in conflict with the provisions of this act, are hereby repealed, so far as they are in conflict.

SEC. 11. This act shall take effect from and after its passage.

SHASTA.

3911. *Shasta.*

SEC. 3911. Beginning at the northern line of Tehama, at the head of Bloody island, in Sacramento river; thence to and down the eastern channel to the

mouth of Battle creek; thence easterly, up Battle creek, by the main channel, to the mouth of the Middle Fork, known as Digger creek; thence up Digger creek to its head; thence east to a point south of Black Butte mountain, forming southeast corner; thence north, on western line of Lassen, to a rock mound, forming northeast corner, on southern line of Siskiyou; thence west, on said southern line, to Castle rock, forming northwest corner; thence southerly along Trinity mountain to the head of Bee Gum creek, forming southwest corner; thence easterly down Bee Gum, Middle Fork, and Cottonwood creeks to the western channel of Sacramento river; thence, by direct line, to the point of beginning.

County seat—Shasta city.

LASSEN.

3912. *Lassen.*

SEC. 3912. Beginning at southwest corner, on the northern line of Sierra, as established in section 3921, at a point on the summit of the ridge which crosses said line, and which divides Long valley from Sierra valley; thence northwesterly, following said ridge, to a point due south from the town of Susanville; thence westerly, along the ridge separating the waters which flow into the east branch of the north fork of Feather river, running through Indian valley, from those which flow into the north fork of Feather river, running through Mountain meadows, to a point on said ridge south from the point where the old and present traveled road from the Big meadows, via Hamilton's ranch, first crosses the said north fork; thence north, to a point east of the southeast corner of Shasta; thence west, along said extension line, to a point due south of Black Butte mountain, being southeast corner of Shasta; thence north, to a point on southern line of Siskiyou marked by a rock mound, being northwest corner of Lassen and northeast corner of Shasta; thence east, along said line, to the eastern boundary of the state; thence south, along said state line, to the northeast corner of Sierra, as established in section 3921; thence west, along the line of Sierra, to the place of beginning.

County seat—Susanville.

An Act providing for the survey of the line forming a portion of the southern boundary of Siskiyou county and the northern boundary of Lassen county.

Approved April 1, 1872; 1872-2, 886.

Surveyor-general to survey and locate line.

SECTION 1. The surveyor-general is hereby directed to survey and locate that portion of the southern boundary-line of the county of Siskiyou, commencing at a point known as the Devil's Castle, near and on the opposite side from Soda Springs, on the upper Sacramento river, and running from said point due east, to the eastern boundary of the State of California, and shall plainly designate said line by suitable monuments, and describe the same upon the maps of state, in accordance with the several acts of the legislature of the State of California, defining the northern boundary of the county of Lassen and that portion of the southern boundary of the county of Siskiyou above described.

Expenses.

SEC. 2. The necessary expenses of such survey and location of said line shall be paid by the State of California, out of the general fund thereof, to the surveyor-general, upon his filing in the office of the state controller, his certificate that such survey is completed according to law, together with his claim, setting forth the items of expense of such survey; provided, that the total expense of such survey shall not exceed the sum of twenty-five hundred dollars; and the sum of twenty-five hundred dollars is hereby appropriated for the payment of the expenses of such survey.

SEC. 3. This act shall take effect from and after its passage.

SISKIYOU.

3913. *Siskiyou.*

SEC. 3913. Beginning at southwest corner, being common corner of Trinity, Klamath, and Siskiyou, as established in section 3910; thence easterly, on northern line of Trinity, to northwest corner of Shasta, as established in section 3911; thence east, on northern line of Shasta and Lassen, to western line of the State of Nevada; thence north, on the line of said state, to the southern line of the State of Oregon; thence west, on Oregon line, to the northeast corner of Del Norte, as established in section 3909; thence southeasterly, on the eastern lines of Del Norte and Klamath, as established in sections 3909 and 3910, to the place of beginning.

County seat—Yreka.

[See also act of March 28, 1874, as to partitioning of Klamath county, between Siskiyou and Humboldt counties, ante, 3910.

The county of Siskiyou was divided, and the new county of Modoc created out of the eastern portion, by the following act.]

MODOC.

An Act to create the county of Modoc, to establish the boundaries thereof, and to provide for its organization.

Approved, February 17, 1874; 1873-4, 124.

Modoc county.

SECTION 1. There shall be formed out of the eastern part of Siskiyou county, a new county, to be called Modoc.

Boundaries.

SEC. 2. The boundaries of Modoc county shall be as follows: Commencing at the northeast corner of the State of California; thence west, along the northern boundary-line of said state, to the range line between Ranges Nos. Four (4) and Five (5) east, of Mount Diablo base and meridian; thence due south, on said range line, to the southern boundary-line of Siskiyou county; thence east along said southern boundary-line, to the state line; and thence north to the place of beginning.

County seat.

SEC. 3. The seat of justice shall be at the town of Dorrisbridge, until otherwise provided by law.

Appointment of county judge—Salary—Terms of county and probate courts.

SEC. 4. The governor of this state shall, when this act takes effect, appoint some suitable person, resident of Modoc county, to act as county judge, who shall reside at the county seat, and whose term of office shall continue until the first day of January, A. D. eighteen hundred and seventy-six, and until his successor is elected and qualified. The county judge shall receive a salary of one thousand dollars per annum, to be paid quarterly, and shall hold the courts required by law to be held by county judges. There shall be three regular terms of the county court held in each year, said terms to commence on the first Monday in February, June, and October; provided, however, the county judge shall call and hold special terms of the probate court whenever public necessity may require. Said county judge shall discharge all the duties required by law of county judges in this state.

Election of officers—Terms of office.

SEC. 5. An election shall be held in said Modoc county within sixty days from the time of the first meeting of the commissioners in this act provided for. At said election there shall be chosen by the qualified voters of said county one district attorney, one county clerk, who shall be ex officio auditor, recorder, and clerk of the board of supervisors, board of equalization, and board of canvas-

sers; one county superintendent of public schools, one sheriff, who shall be ex officio county tax collector, one county assessor, one county treasurer, one county surveyor, one county coroner, who shall be ex officio public administrator. Said county officers shall hold their respective offices until the first Monday of March, A. D. eighteen hundred and seventy-six, and until their successors are elected and qualified. At said election there shall be chosen one supervisor for each supervisor district in said county, who shall hold their offices as follows: District number one, until the first Monday of November, A. D. eighteen hundred and seventy-four; District number two, until the first Monday of November, A. D. eighteen hundred and seventy-five; and District Number Three, until the first Monday of November, A. D. eighteen hundred and seventy-six. At said election there shall be chosen two constables and two justices of the peace for each township: provided, however, that all constables and justices and road overseers elected at the general and judicial elections held in the year A. D. eighteen hundred and seventy-three, residents of Modoc county, shall hold their offices for the time provided by law, upon having duly qualified as township officers of Modoc county for the respective townships in which they reside, as said townships are organized by the action of the board of commissioners, provided for by this act. At said election the qualified electors of said county shall vote for a place for county seat, and a majority of all the votes cast shall be necessary to locate the same; and until the county seat is located, by a vote of the qualified electors, the board of supervisors of said Modoc county are hereby prohibited from incurring any indebtedness for the erection of county buildings in said county. For the purposes of this election the county clerk of Siskiyou county shall furnish each election precinct established by the board of commissioners of Modoc county with two (2) copies of the great register of Siskiyou county, printed for the general election held in said county in the year eighteen hundred and seventy-three; and, if necessary, said county clerk is hereby authorized to take said copies from the election returns now on file in his office.

Board of commissioners.

SEC. 6. The governor shall, when this act takes effect, appoint five persons, residents of Modoc county, who shall be and constitute a board of commissioners to perfect the organization of said county, a majority of whom shall constitute a quorum. Said commissioners shall meet at the county seat within twenty days after their appointment, and, after being duly sworn to faithfully discharge their duties, as prescribed in this act, shall organize, by electing from their number a president and clerk. They shall then divide said county into townships, define their boundaries, and designate the name of each. They shall also divide said county by townships into three supervisor districts, and number the same. They shall also establish election precincts, and appoint one inspector and two judges of election for each precinct in said county. They shall give thirty days' notice, by proclamation in some newspaper published in Modoc county, or if there be no newspaper published in Modoc county, then said publication to be made in some newspaper published in the county of Siskiyou, of the officers to be elected, the precincts established, with their names and boundaries, the officers of election of each precinct, and the number and boundaries of each supervisor district. Said commissioners shall, on the second Monday after said election, meet at the county seat as a board of canvassers, and proceed to canvass the election returns. Said commissioners, their president and clerk, are hereby authorized and required to discharge the same duties as are now required by law of boards of supervisors and county clerks in the counties in this state, so far as the same apply to holding elections, canvassing election returns, and issuing certificates of election. They

shall keep a full record of all their proceedings, and file the same, with the original election returns, in the county clerk's office, as soon as he shall have been qualified, and thereupon the power and duties of said commissioners shall cease.

Organization.

SEC. 7. It shall be the duty of the board of supervisors of Modoc county, whose election is provided for by this act, to meet at the county seat on the first Monday of the month subsequent to their election, take the oath of office, and file the official bond required by the Political Code. The member of district number one, shall be president of the board. They shall then allow such per diem and mileage to the commissioners and officers of election as they may think proper and just, and a warrant shall be drawn by the auditor on the county general fund in favor of each person to whom an allowance shall have been made, for the amount of such allowance. Said board shall appoint two citizens, and freeholders of Modoc county, to act as joint commissioners with an equal number to be appointed by the board of supervisors of Siskiyou county, to ascertain and declare the amount of the indebtedness of Modoc county to Siskiyou county. Immediately on their appointment, such commissioners shall notify the board of supervisors of Siskiyou county of that fact. Upon the receipt of such information said board shall proceed, without unnecessary delay, to appoint a like number of commissioners, citizens and freeholders of Siskiyou county, who shall, at a time and place to be agreed upon, meet with the commissioners of Modoc county. The commissioners of the respective counties, after having severally taken an oath to discharge honestly and to the best of their ability their duties as commissioners, shall organize as a joint commission, by the selection of one of their number as president, and one as secretary. As soon as organized, the joint commission shall proceed, in the following manner, to determine the amount of the indebtedness of Modoc county to Siskiyou county, to wit: they shall ascertain the indebtedness of Siskiyou county at the time this act takes effect; they shall then ascertain the total value of the assets belonging to said county; they shall then ascertain the assessed value, under the assessments of eighteen hundred and seventy-three, of the property in the territory hereby set apart to form Modoc county; then, after deducting the assets from the indebtedness, so as to ascertain the actual indebtedness, the proportion due from Modoc county to Siskiyou county shall be ascertained as follows: as the total assessed value of property in the territory taken from Siskiyou county to form Modoc county is to the total assessed value of Siskiyou county before the formation of Modoc county, so shall be the proportion of the actual indebtedness of Modoc county to Siskiyou county, and said commissioners shall certify to their respective boards of supervisors such amount. The board of supervisors of Modoc county shall then issue the bonds of said county, payable in ten years from the organization of said county, and bearing interest at the rate of ten per cent. per annum, payable annually, principal and interest of said bonds to be paid in United States gold coin to said Siskiyou county, for such sum as the commissioners certify to be due, said bonds to be of the denomination of five hundred dollars. Said board of supervisors shall procure and provide a suitable place or places, to be used as a court-house and jail until the location of the county seat is determined and a suitable building erected. They shall, when they levy state and county taxes, levy a tax of twenty cents upon each one hundred dollars of taxable property in said county, which shall be collected as other state and county taxes are collected, and shall be set apart as an interest and sinking fund to liquidate the debt due from Modoc county to the county of Siskiyou. Said interest and sinking fund shall be appropriated, first, to pay the interest due on the bonds, according to the

tenor thereof, given by Modoc county to Siskiyou county; and, second, whenever there shall be a sufficient sum remaining, after paying interest as aforesaid, to pay off one of said bonds, the treasurer of Modoc county shall present the same to the treasurer of Siskiyou county, at Yreka, who, upon receipt thereof, shall surrender one of said bonds, which shall be canceled by the treasurer of Modoc county, and filed in the clerk's office. Said board of supervisors shall exercise such other powers and duties as are conferred by the general laws on boards of supervisors in the counties of this state.

Actions removed.

SEC. 8. All civil actions, or proceedings in the nature of actions, whether original or upon appeal, civil or criminal, which shall be pending in the district court, county court, or probate court, in the county of Siskiyou, at the time of the organization of Modoc county, in which the defendants are residents of Modoc county, shall be removed for trial and final determination to the proper courts of Modoc county, on motion of any party interested; provided, that actions commenced for the collection of taxes and licenses, shall not be removed from the courts of Siskiyou county; provided, further, that in all criminal cases, where the offenses were committed within the limits of Modoc county, upon the application of the district attorney of Modoc county, said causes shall be removed to Modoc county.

Transcript of records.

SEC. 9. All residents or property holders of Modoc county, upon application to the county recorder of Siskiyou county, and upon the payment of the fees required by law, shall be entitled to receive a transcript of the record, duly attested, of any property situated in the county of Modoc and recorded in his office; and upon presentation of said transcript to the county recorder of Modoc county, and upon the payment of the fees required by law, said recorder shall record the same, and said record shall have the full force and effect of the original record; provided, however, that the board of supervisors of Modoc county shall, within two years, procure a suitable set of books, and make such arrangements as they may agree upon with the county recorder of Siskiyou county, for the transcribing therein all necessary records, properly certified; said records to have the same effect and force as the original records.

Senatorial and judicial districts.

SEC. 10. Modoc county shall be attached to and form a part of the twenty-eighth senatorial district, and, for judicial purposes, shall be attached to and form a part of the ninth judicial district. The terms of the district court shall be held in and for the county of Modoc on the second Monday of July and the third Monday of October of each year.

Election of officers.

SEC. 11. The county officers of Modoc county shall, except as otherwise provided by this act, be elected at the same time as the county officers in other counties of this state, and shall hold their offices for the term fixed by law. They shall give bonds, for the faithful discharge of their duties, in such manner and sums as required by the Political Code. The supervisors of Modoc county shall provide for the election of their successors, whose term of office shall be three years.

Duties.

SEC. 12. All officers provided for by this act, shall perform duties as required by the general laws of the state, unless otherwise provided by this act.

Compensation of board.

SEC. 13. The supervisors of Modoc county shall receive for their services four

dollars per day, and twenty-five cents per mile for coming to the county seat; provided, that but one mileage shall be charged for each term of the board; and, provided, that for the year eighteen hundred and seventy-four, and any year thereafter, the per diem and mileage of any one supervisor shall not exceed the sum of two hundred dollars.

Salaries of officers.

SEC. 14. The officers of Modoc county shall receive the following salaries and fees: The treasurer shall receive per annum the sum of six hundred dollars; the assessor, for assessing said county, shall receive per annum the sum of six hundred dollars; the district attorney the sum of five hundred dollars, and the fees allowed the district attorney of Siskiyou county; the superintendent of public schools, the sum of three hundred dollars; the sheriff and county clerk shall receive the same fees the sheriff and county clerk of Siskiyou receive; provided, that when said fees are a charge against said Modoc county, a deduction of twenty-five per cent. shall be made therefrom; and, provided further, that the county clerk, as clerk of the board of supervisors, board of equalization, and board of canvassers, shall receive the sum of one hundred and fifty dollars per annum, payable quarterly. The other officers of Modoc county shall receive no salaries, but the same fees allowed similar officers in Siskiyou county.

Notaries.

SEC. 15. Modoc county shall be entitled to five notaries public, as provided for by law.

School and school moneys.

SEC. 16. The superintendent of public schools of Siskiyou county shall furnish the superintendent of public schools of Modoc county a certified copy of the last census lists of the different school districts in the territory set apart to form Modoc county, and shall draw his warrants on the treasurer of Siskiyou county, in favor of the superintendent of schools of Modoc county, for all money that is or may be due by apportionment or otherwise to the different school districts of Modoc county.

SEC. 17. No indebtedness shall be incurred by Modoc county which will in the aggregate exceed the sum of twenty thousand dollars.

SEC. 18. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

SEC. 19. This act shall take effect and be in force from and after its passage.

An Act supplemental to the foregoing act of February 17, 1874.

Approved March 23, 1874; 1873-4, 517.

[This act made provision for the hospital fund of Modoc county; also defined the powers of the commissioners as to the registry of voters; also provided for the levy of a tax for a building fund; and extended the act of March 26, 1857, in relation to hogs found running at large in Colusa and other counties, over Modoc county.]

HUMBOLDT.

3914. Humboldt.

SEC. 3914. Beginning at southwest corner of Klamath, as established in section 3910; thence east, to common corner of Klamath, Humboldt, and Trinity, in Trinity river, as established by section 3910; thence southeasterly, up Trinity river, to the mouth of its south fork; thence southeasterly, along the eastern side of said south fork, one hundred feet above high water mark, to the mouth of Grouse creek; thence south, to a point on the fortieth degree of north latitude, being on northern line of Mendocino, and forming southeast corner of

Humboldt; thence west, on said line, to the Pacific ocean; thence northerly, along the ocean shore, to the place of beginning.

County seat—Eureka.

[See also act of March 28, 1874, as to partitioning Klamath county between Humboldt and Siskiyou counties, ante, 3910.]

TEHAMA.

3915. *Tehama.*

Sec. 3915. Beginning at the point of intersection of Sacramento river with south line of township twenty-three north, Mount Diablo base; thence west, on said line, being northern line of Colusa, to the summit of the coast range, being southwest corner; thence northerly, on said summit line, to the southwest corner of Shasta, as established in section 3911; thence easterly, on the southern line of Shasta, as established in section 3911, to the northwest corner of Plumas, being the point of intersection of southern line of Shasta with the summit line of the dividing ridge between the waters of Mill and Deer creeks, tributaries of the Sacramento river, and Rice's and Warner's creeks, tributaries of the north fork of Feather river, forming northeast corner of Tehama; thence southerly, along said summit line, to the north point of Butte county, it being the point where the northern road from Big Meadows to Butte Meadows, by Dye's house, crosses the said summit line; thence southwesterly, in a direct line, to the head of Rock creek; thence southwesterly, down Rock creek, to the south line of township twenty-four north, Mount Diablo base; thence west, on said line, to the Sacramento river; thence along said river to the place of beginning.

County seat—Red Bluff.

COLUSA.

3916. *Colusa.*

Sec. 3916. Beginning at southeast corner, being northeast corner of Yolo, in Sacramento river, at its intersection with the south line of township thirteen north, Mount Diablo base; thence west, on said township line to the ridge dividing the waters flowing into Bear creek and Stony creek, from those flowing west into the north fork of Cache creek and Clear lake; thence northerly, along said ridge to the summit line of the coast range, being the western line of Lake, forming southwest corner of Colusa and northwest corner of Yolo; thence northerly on said summit and western boundary of Lake, through Hull's mountain, to the southwest corner of Tehama, as established in section 3915; thence easterly on southern line of Tehama to initial point of Tehama, in Sacramento river, on south line of township twenty-three; thence down said river to the southwest corner of the Llano Seco grant; thence northeasterly along said grant line to its intersection with the northern boundary of township nineteen north; thence east to Butte creek; thence down Butte creek to Butte slough; thence up Butte slough to Sacramento river; thence down Sacramento river to the place of beginning.

County seat—Colusa.

LAKE.

3917. *Lake.*

Sec. 3917. Beginning at the summit of Mount Hull, near Mount St. John, on the western line of Colusa, and forming the northeast corner of Lake and east corner of Mendocino; thence southerly and circuitously, by the summit line of the Mayacmas range, being the dividing ridge between the waters flowing into the Russian and Eel rivers and those flowing easterly into Clear lake, to the summit of Mount St. Helena; thence easterly along the line heretofore established to the Buttes cañon road; thence easterly, in a right line, to the

most northern point of the Berryessa rancho; thence easterly along the northern line of said rancho to the northeast corner thereof; thence east to the western line of Yolo county, as established in section 3929; thence northerly, on the western line of Yolo and Colusa counties, to the place of beginning.

County seat—Lakeport.

An Act to more clearly define the boundary-line between the counties of Lake and Yolo, in the State of California.

Approved April 1, 1872; 1871-2, 903.

Sanford line.

SECTION 1. The line established by H. H. Sanford, as deputy surveyor-general, under special instruction of J. W. Bost, surveyor-general of California, at the request of the boards of supervisors of the counties of Lake and Yolo, and designated on a certain map on file in the office of the surveyor-general of the State of California, indorsed "Map of the boundary-line between Lake and Yolo counties, surveyed April, 1871, by H. H. Sanford, deputy surveyor-general of California," is hereby declared the boundary-line between the said counties of Lake and Yolo, provided the same is in accordance with the provisions of an act to more clearly define and establish the boundary-line of Yolo county, approved March 3, 1866.

SEC. 2. This act shall take effect from and after its passage.

MENDOCINO.

3918. *Mendocino.*

SEC. 3918. Beginning at the southwest corner of Humboldt, as established in section 3914; thence, southwesterly, by the ocean shore, to a point three miles west of Walhalla river; thence east to the mouth of said stream, and up the channel two miles; thence easterly in a direct line, on northern line of Sonoma, to the most northern and highest peak of Redwood mountain; thence east to the western boundary of Lake, on the summit of the Mayacmas ridge; thence northerly, along the western and northern boundary of Lake, as established in section 3917, to the northeast corner thereof; thence northerly, along the western boundaries of Colusa and Tehama, as established in sections 3915 and 3916, to a point on the line of the fortieth parallel of north latitude, forming the northeast corner of Mendocino and the southeast corner of Trinity; thence west along said parallel, on southern line of Humboldt and Trinity, to the place of beginning.

County seat—Ukiah city.

TRINITY.

3919. *Trinity.*

SEC. 3919. Beginning at the northeast corner of Mendocino, as established in section 3918, on the summit line of the coast range; thence northerly on said range and the western line of Tehama and Shasta, to the point of intersection with the southern line of Siskiyou, being northeast corner of Trinity and northwest corner of Shasta; thence westerly, on the ridge dividing the waters flowing south and west into Trinity and Salmon rivers from the waters flowing north and east into Scott's and Sacramento rivers, to common corner of Klamath, Siskiyou, and Trinity, as established in section 3910; thence southwesterly, on the line of Scott's mountain, being the southern line of Klamath, to common corner of Trinity, Klamath, and Humboldt, as established in section 3909; thence southerly, by the eastern line of Humboldt, to the fortieth parallel of latitude, being the northern line of Mendocino, forming southwest corner; thence east, to the place of beginning.

County seat—Weaverville.

PLUMAS.

3920. *Plumas.*

SEC. 3920. Beginning on dividing ridge between the waters of Yuba and Feather rivers, at common corner of Yuba, Butte, and Plumas, established by survey and map of Joseph Johnston, county surveyor of Yuba county, July, eighteen hundred and fifty-seven, and indicated by a large spruce tree standing in front of the Buckeye house, marked "Corner of Plumas, Butte, and Yuba;" thence northeasterly, by direct line to the northwest corner of Sierra and the south corner of Plumas, in Slate creek, at a point where the third course or terminating north and south line of survey of Keddie and Church, made June nineteenth, eighteen hundred and sixty-six, crosses said creek; thence northeasterly up said creek, to the intersection of the first north and south line of said survey; thence north, on said line, to the initial point thereof, being the summit line of the ridge dividing the waters of Feather river from the waters of the Yuba river; thence easterly, on said summit line, and east to "The Falls," about one mile below the outlet of Gold lake; thence east, to the summit of the ridge which divides Long valley from Sierra valley, this point forming the most southern southwest corner of Lassen, as established in section 3912, also the southeast corner of Plumas; thence northwesterly, on the southwestern irregular line of Lassen, as established in section 3912, to the southeast corner of Shasta, as established in section 3911; thence west on the southern line of Shasta, to the northeast corner of Tehama, as established in section 3915; thence southerly, on the ridge, being eastern line of Tehama and Butte, to the point of intersection of a line running northwesterly from the initial point, at the Buckeye house, in line with said initial point and the southern edge of Walker's plains; thence on said line to the place of beginning.

County seat—Quincy.

SIERRA.

3921. *Sierra.*

SEC. 3921. Beginning at the south corner of Plumas, in the centre of Slate creek, as established in section 3920; thence easterly, on southern line of Plumas, as established in said section, to the range lying between townships twenty-one north, range thirteen east, and township twenty-one north, fourteen east, Mt. Diablo meridian; thence north, on said range line, to the northwest corner of township twenty-one north, fourteen east, Mt. Diablo B. and M.; thence east on the line between townships twenty-one and twenty-two north, Mt. Diablo base, to the state line forming the northeast corner; thence south, on said state line, to the northeast corner of Nevada county, a point east of the source of south fork of the middle Yuba river; thence west, to the source of, and down the south fork and middle Yuba river, to a point ten miles above the mouth of the latter; thence in a straight line, northerly, to a point on the north fork of the Yuba river, known as Cuteye Foster's bar; down said river, to the mouth of Big Cañon creek; thence up said creek, four miles; thence in a straight line to the place of beginning.

County seat—Downieville. [*Amendment, approved March 16, 1874; Amendments 1873-4, 166; took effect immediately.*^(a)]

BUTTE.

3922. *Butte.*

SEC. 3922. Beginning at the northwest corner of Yuba, in Feather river, at the mouth of Honcut creek; thence northeasterly up the Honcut creek and the

(a) The original section described the northerly line as follows: "thence easterly, on southern line of Plumas, as established in said section, to the southeast corner thereof and southwest corner of Lassen; thence east to the state line."

north or Natehez branch of the same, to its source, on line established by surveyor-general on survey of Westcoatt and Henning, eighteen hundred and fifty-nine; thence to the summit line of the ridge dividing the waters of the Yuba and Feather rivers; thence northeasterly, up said ridge, on line of said survey, to the third station tree westerly from the Woodville house; thence in a right line fifty chains, more or less, to a station tree easterly from said house about twenty-six chains, said right line passing about three chains northerly of said house; thence northeasterly on said ridge and survey, to a point on line of said survey, a little westerly from the village of Strawberry valley, which point is two thousand feet distant westerly, in right line from point of highest altitude on line of said survey east, and within three hundred yards of the village of Strawberry valley; thence to the common corner of Plumas, Butte, and Yuba, as established in section three thousand nine hundred and twenty; thence northwesterly, on southwesterly line of Plumas, as established in said section, to the most eastern southeastern corner of Tehama, as established in section three thousand nine hundred and fifteen, forming also the north corner of Butte; thence southwesterly, on the southeasterly line of Tehama, to the southeast corner of Tehama, at point of intersection of Rock creek and southern line of township twenty-four north, Mount Diablo base; thence west on said township line to the Sacramento river; thence down said river, to the southwest corner of the Llano Seco grant; thence northeasterly along said grant line to its intersection with the northern boundary of township nineteen north; thence east to Watson's bridge on Butte creek; thence on Colusa county, east line, down Butte creek, to the northwest corner of Sutter county, as established in section three thousand nine hundred and twenty-six; thence east on north line of Sutter county to Feather river; thence down Feather river to place of beginning.

County seat—Oroville. [*Amendment, approved March 7, 1874; Amendments 1873-4, 167; took effect from passage.*^(a)]

NEVADA.

3923. *Nevada.*

SEC. 3923. Beginning at northwest corner, at a point in the main Yuba river at the mouth of Deer creek; thence up the Main Yuba, to the mouth of the Middle Yuba; thence up the latter, to the mouth of the south fork of the same; thence up the south fork, to its source; thence east, to the eastern line of the state, all on the southeastern and southern lines of Yuba and Sierra; thence south, along the state line, to the northeast corner of Placer, as established in section 3924; thence westerly, on the northern line of Placer, as established in said section, to the source of Bear river; thence down Bear river, to a point south of the junction of Deer creek and the Main Yuba, forming southwest corner; thence north, to the place of beginning.

County seat—Nevada city.

PLACER.

3924. *Placer.*

SEC. 3924. Beginning on southwest corner, at a point where the west line of range five east, Mount Diablo meridian, intersects the northern line of Sacramento county, as established in section 3928; thence north, to the northwest corner of township twelve north, range five east; thence east, to the southwest corner of section thirty-four, township thirteen north, range five east; thence north, to Bear river; thence on southern line of Nevada, up said river, to its

(a) The original section described the boundary-line after striking the Sacramento river as follows: "thence down said river to Placer city; thence on line of Colusa, southeasterly to Watson's bridge," and so on as in the amendment.

source; thence east, in a direct line, to the eastern line of the State of California, forming northeast corner; thence southerly, along said line, to the northeast corner of El Dorado, as established in section 3927; thence westerly, on the northern lines of El Dorado and Sacramento, as established in sections 3927 and 3928, to the place of beginning.

County seat—Auburn.

YUBA.

3925. *Yuba.*

SEC. 3925. Beginning at southwest corner, at junction of Feather and Bear rivers; thence up Bear river, on the line of Sutter and Placer, to southwest corner of Nevada, as established in section 3923; thence north, on Nevada line, to the junction of Deer creek and Main Yuba; thence up the Main to the Middle Yuba, and up the Middle Yuba ten miles, to the southwest corner of Sierra, as established in section 3921; thence in direct line northerly, and on line of Sierra, to Cuteye Foster's bar, on North Yuba river; thence down the river to the mouth of Big Cañon creek; thence up said creek four miles; thence in direct line to south corner of Plumas and northwest corner of Sierra, in Slate creek, as established in sections 3920 and 3921; thence northwesterly, in a direct line, to common corner of Plumas, Butte, and Yuba, in front of Buckeye house, as established in section 3920; thence on southwestern line of Butte, as established in Westcott and Henning's survey and map, down the Honey creek, to its junction with Feather river; thence down Feather river, to the place of beginning.

County seat—Marysville.

SUTTER.

3926. *Sutter.*

SEC. 3926. Beginning at northwest corner of Sacramento county, as established in section 3928; thence up the Sacramento river to the mouth of Butte creek; thence up said creek to its intersection with the south line of section nineteen, township seventeen north, range one east, Mount Diablo base and meridian; thence east, on section lines, to Feather river; thence down Feather river to the mouth of Bear river; thence up Bear river to northwest corner of Placer, as established in section 3924; thence along the western boundary of Placer to the southwest corner thereof; thence westerly, along the northern boundary of Sacramento county, to the place of beginning.

County seat—Yuba city.

EL DORADO.

3927. *El Dorado.*

SEC. 3927. Beginning on the west corner, at the junction of the north and south forks of the American river; thence up the north fork to the mouth of the middle fork; thence up the middle fork to the mouth of the south fork of the middle fork at Junction bar; thence up said last-named fork to a point where the same is intersected by the Georgetown and Lake Bigler trail; thence along said trail to Sugar Pine point, on the western shore of Lake Bigler; thence east to the state line; thence south and southeasterly, on the state line, to the northern corner of Alpine, being the point where the state line crosses the eastern summit line of the Sierra Nevada mountains; thence southwesterly, along the western line of Alpine, as established in section 3931, to the common corner of Alpine, Amador, and El Dorado, as established by said section; thence westerly, on the northern line of Amador, as established in section 3930, and down the Cosumnes river and south fork thereof to the eastern line of Sacramento, as established in section 3928; thence northerly, by the eastern line of Sacramento, to the south fork of the American river; thence down the latter to the place of beginning.

County seat—Placerville.

SACRAMENTO.

3928. *Sacramento.*

SEC. 3928. Beginning on northern line of the county at a point ten miles north of a point which was on the thirtieth of March, eighteen hundred and fifty-seven, the mouth of the American river; thence easterly, to the junction of the north and south forks of said river; thence up the principal channel of the south fork to a point one mile above the head of Mormon island, so as to include said island in Sacramento county, forming northeast corner; thence southerly to a point on the Cosumnes river eight miles above the house of William Daylor; thence south to Dry creek, forming southeast corner; thence down said creek to its entrance into the Mokelumne river; thence down the Mokelumne river to a point where said river divides into east and west branches; thence down the east branch to its junction with the west branch; thence down said river to its junction with the San Joaquin river; thence down the San Joaquin river to the mouth of the Sacramento river, at the head of Suisun bay, forming southwest corner; thence up the Sacramento river to the mouth of Merritt's slough; thence up said slough to the mouth of Sutter slough; thence up said Sutter slough to the Sacramento river; thence up the Sacramento river to a point west of the place of beginning, forming northwest corner of Sacramento county; thence east to the place of beginning.

County seat—Sacramento city.

YOLO.

3929. *Yolo.*

SEC. 3929. Beginning on southeast corner, at the most easterly northeast corner of Solano, in Sutter slough, at its intersection with the first standard north; thence west on said standard line to west line of range three east, Mount Diablo meridian; thence north on said range line to the northeast corner of township seven north, two east; thence west nine and seventy-two one hundredths chains to southeast corner of township eight, two east; thence north on easterly line of said township to the old bed of Putah creek; thence westerly up the old bed and main Putah creek to a point on eastern line of Napa, in the cañon called Devil's Gate, where the highest ridge of mountains divides the waters of the Sacramento from Berryessa valley, forming the most westerly of the southwest corners of Yolo and northwest corner of Solano; thence northerly along the highest ridge of said mountains to Cache creek; thence east to the summit of the spur of the coast range which divides the waters flowing east into Bear creek and Stony creek, and those flowing west into the north fork of Cache creek; thence northerly along the said dividing ridge, following the divide of said waters to the summit of the coast range of mountains on the easterly line of Napa and Lake and to the southwest corner of Colusa, as established in section 3916; thence easterly on southern line of Colusa, as established in said section, to Sacramento river, forming the northeast corner at the point of intersection of the southern line of township thirteen north, Mount Diablo base; thence down said river to Sutter slough; thence down said slough to the place of beginning.

County seat—Woodland.

[See also act of April 1, 1872, ante, 3917.]

AMADOR.

3930. *Amador.*

SEC. 3930. Beginning at southwest corner, in the Mokelumne river, on the eastern boundary of San Joaquin, as established in section 3932; thence up said river to its junction with the north fork of the same; thence up the said north fork to the line of Alpine, being at a point south of common corner of Amador,

* Alpine and El Dorado, which is in the centre of the Amador and Nevada road, in front of Z. Kirkwood's house, as established in section 3931; thence north by the line of Alpine to said common corner; thence westerly along said road to a point east of the source of the south fork of the south fork of the Cosumnes river; thence west to said source; thence down the south fork of the south fork and the south fork and the main Cosumnes river to the eastern line of Sacramento, as established in section 3928; thence by eastern lines of Sacramento and San Joaquin to the place of beginning.

County seat—Jackson.

ALPINE.

3931. *Alpine.*

SEC. 3931. Beginning at north corner, at a point where the state line crosses the east summit of the Sierra Nevada mountains, being the most easterly corner of El Dorado; thence southwesterly along said summit to a point two miles west of James Green's house, in Hope valley, called Thompson's peak; thence southwesterly in a direct line to a point on the Amador and Nevada turnpike road in front of Z. Kirkwood's house, being common corner of Amador, Alpine, and El Dorado; thence south across the north fork of the Mokelumne river to the road leading from West Point, in Calaveras, to Big Tree road, near the Big Meadows; thence easterly along said West Point road to the Big Tree road; thence easterly in a direct line to where the Sonora trail strikes the middle fork of the Stanislaus river; thence easterly along said trail to the summit of the Sierra Nevada mountains; thence northerly along said summit to the dividing ridge between West Walker and Carson rivers; thence northeasterly along said dividing ridge to the state line, forming easterly corner of Alpine and northerly corner of Mono; thence northwest along said state line to the place of beginning.

County seat—Silver Mountain.

SAN JOAQUIN.

3932. *San Joaquin.*

SEC. 3932. Beginning at the junction of the San Joaquin and Mokelumne rivers, on the line of Sacramento county; thence up the latter to the mouth of Dry creek; thence up Dry creek to the southeast corner of Sacramento, as established in section 3928; thence southeasterly, to a point on Mokelumne river, being the point of beginning of survey of Boucher and Wallace of line between San Joaquin and Calaveras counties, May, eighteen hundred and sixty-four; thence southeasterly, on the line of said survey, to the extreme northern corner of Stanislaus county, on north side of and near to Calaveras river, at a point on western line of range ten east, Mount Diablo meridian, as established by survey of George E. Drew, approved May, eighteen hundred and sixty, shown on map of said survey; thence south, on said range line, to Stanislaus river; thence down said river to its confluence with the San Joaquin; thence southwest to the summit of the coast range, as shown on survey and map of Wallace and Stakes, May, eighteen hundred and sixty-eight, and forming the common corner of San Joaquin, Stanislaus, Santa Clara and Alameda, as shown also on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence northwesterly, following the summit of the said coast range to a post near the middle of section thirty-two, township four south, range four east; thence north to the southeast corner of Contra Costa, being a point on the west channel of the San Joaquin river, as laid down on Gibbe's map, at a bend where the said west channel, running downward, takes a general course north, which point is shown on map of Boardman and Stakes, July, eighteen hundred and sixty-eight; thence

down the said west channel to its confluence with the main river; thence down said river to the place of beginning.

County seat—Stockton.

STANISLAUS.

3933. *Stanislaus.*

SEC. 3933. Beginning at common corner of Stanislaus, Santa Clara, Alameda, and San Joaquin, on the summit of Mount Boardman, of the Mount Diablo range, as shown on survey and map of Wallace and Stakes, May, eighteen hundred and sixty-eight; thence southeasterly, on the summit line of said range, being eastern line of Santa Clara, to the northwest corner of Merced, forming the southwest corner of Stanislaus, as established by survey and map of A. J. Stakes, July, eighteen hundred and sixty-eight; thence northeasterly, on line as established by said last-named survey, to the junction of the Merced and San Joaquin rivers; thence down the San Joaquin seven miles; thence in a direct line a little north of east to a monument established by survey of A. J. Stakes, being on the summit of the ridge between Merced and Stanislaus, and marking common corner of Tuolumne, Merced, Mariposa, and Stanislaus; thence northwesterly, in a direct line, and crossing the Stanislaus river, to monument established by survey and map of George E. Drew, May, eighteen hundred and sixty, on the north bank of said last-named river; thence northwesterly, on line of said survey, to its intersection with western line of range ten east, Mount Diablo meridian, which point is marked by a monument establishing the north corner of Stanislaus county; thence south, on said range line, to Stanislaus river; thence down the latter to its mouth in San Joaquin river; thence southwesterly on line as surveyed and mapped by Wallace and Stakes, May, eighteen hundred and sixty-eight, to the place of beginning.

County seat—Modesto.

MERCED.

3934. *Merced.*

SEC. 3934. Beginning at northwest corner, being southwest corner of Stanislaus, as shown on survey and map of A. J. Stakes, eighteen hundred and sixty-eight; thence northeasterly, on southern line of Stanislaus, as described in section 3933, to common corner of Tuolumne, Mariposa, Merced, and Stanislaus, as established in said section; thence southeasterly, by direct line, being western line of Mariposa, to Phillips' ferry, on Merced river; thence southeasterly, on line of Mariposa, being line shown on "map of Mariposa county," to Newton's crossing on Chowchilla creek, forming southeast corner; thence down the northern side and on high water mark, being on line of Fresno, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, to the eastern line of Monterey, on summit of coast range, forming southwest corner; thence northwesterly, by said summit and line of Monterey and Santa Clara, to the place of beginning.

County seat—Snelling.

MONO.

3935. *Mono.*

SEC. 3935. Beginning at north corner on state line, being east corner of Alpine, as established in section 3931; thence southwesterly, on the easterly line of Alpine, as established in section 3931, to the main summit of the Sierra Nevada mountains; thence southerly, along said summit, on easterly line of Alpine, Tuolumne, and Fresno, to a point where the northern line of township six south, Mount Diablo base, intersects said summit line, forming southwest corner; thence east, on said township line, being the northern line of Inyo, to

the eastern line of the state, forming southeast corner; thence northwest, on the state line, to the place of beginning.

County seat—Bridgeport.

CALAVERAS.

3936. *Calaveras.*

SEC. 3936. Beginning at southern corner, at a point in the Stanislaus river where it intersects the eastern line of Stanislaus county, as established in section 3933, being a point one mile north of Knight's ferry, and being the western corner of Tuolumne county; thence up said river and north fork thereof, to the easterly line of Alpine, as established in section 3931; thence northerly, on the line of Alpine, to the southeast corner of Amador, as established in sections 3930 and 3931; thence southwesterly, on the southern line of Amador, down the Mokelumne river, to the southwest corner of Amador, on eastern line of San Joaquin county; thence southerly and southeasterly, on line of San Joaquin and Stanislaus, as established in sections 3932 and 3933, to the place of beginning.

County seat—San Andreas.

TUOLUMNE.

3937. *Tuolumne.*

SEC. 3937. Beginning at the most western corner, being the southern corner of Calaveras, as established in section 3936, in Stanislaus river; thence southeasterly to common corner of Merced, Mariposa, Stanislaus, and Tuolumne, as established in section 3933; thence easterly on northern line of Mariposa, following summit line of the dividing ridge between Tuolumne and Merced rivers, to Mount Lyell, as marked on Warren Holt's map, eighteen hundred and sixty-nine, and the summit of the Sierra Nevada mountains, being on the western line of Mono and common corner of Tuolumne, Mariposa, and Fresno; thence northerly by the line of Mono, being the summit line of the Sierra Nevada mountains, to the southern corner of Alpine, as established in section 3931; thence northwesterly by the line of Alpine to the southeastern corner of Calaveras; thence westerly on the line of Calaveras and down the Stanislaus river, to the place of beginning.

County seat—Sonora.

MARIPOSA.

3938. *Mariposa.*

SEC. 3938. Beginning at the initial point of Fresno county, being where the Stockton road to Millerton crosses the Chowchilla creek, known as Newton's crossing; thence north, forty-five degrees east, to the southwest corner of section eleven, township six south, range twenty east, Mount Diablo base and meridian; thence east, following section lines to main ridge between waters of Big creek and Fresno river; thence easterly on the main ridge which divides the waters of the Merced and San Joaquin rivers, to the intersection of the same with the summit line of the Sierra Nevada mountains and western line of Mono, the same point forming common corner of Tuolumne, Fresno, and Mariposa, as described in section 3937; thence westerly, by the southern boundary of Tuolumne, to the southwest corner thereof, being common corner of Stanislaus, Merced, Tuolumne, and Mariposa; thence southeasterly, on western line of Merced, as established in section 3934, to the place of beginning.

County seat—Mariposa.

An Act to better define the boundary-line of Mariposa and Fresno counties.

Approved April 1, 1872; 1871-2, 891.

Description of boundary-line.

SECTION 1. The line at present known as the boundary line between Mariposa and Fresno counties, from the westerly point of junction of said counties,

running easterly to the southwest corner of section eleven and the northwest corner of section fourteen, in township six south, range twenty east, of Mount Diablo meridian; thence east to the northwest corner of section fourteen, in township six south, range twenty-one east; thence north to the northwest corner of section thirty-five, in township five south, range twenty-one east; thence east to the southwest corner of section thirty, in township five south, range twenty-two east; thence north, to the southwest corner of the Mariposa big tree grant; thence east along the line of said grant to the southeast corner of said grant; thence north along the line of said grant to the northeast corner of the same; thence north to the original boundary-line between the counties of Mariposa and Fresno; thence along said line to the present boundary-line of Tuolumne county, is hereby declared and constituted the boundary-line between said counties. [*Amendment, approved February 11, 1874; 1873-4, 100; took effect from passage.*^(a)]

Survey of line.

SEC. 2. The respective county surveyors of Mariposa and Fresno counties shall proceed to survey and complete said defining line, with the necessary monuments, prior to the first day of September, 1872. Reasonable compensation, not to exceed one hundred and fifty dollars each, may be allowed by the supervisors of Mariposa and Fresno counties, to be paid out of the county general funds of said counties; and in case of a disagreement, they shall be empowered to call in a third surveyor as umpire, whose decision shall be final, but whose services shall in no case be an additional charge.

SEC. 3. The act entitled "An Act to better define the boundary-line between Fresno and Mariposa counties," approved March 29, 1870, is hereby repealed.

SEC. 4. This act shall take effect immediately.

FRESNO.

3939. Fresno.

SEC. 3939. Beginning at southeast corner of Merced and southwest corner of Mariposa, being a point where the Stockton road to Millerton crosses the Chowchilla creek, known as Newton's crossing; thence westerly down said stream, on the north side, on line of high water mark, being on southeastern line of Merced, to the lower clump of cottonwood timber at the sink of said creek; thence south, forty-five degrees west, and on line of Merced, to the eastern boundary-line of Monterey, as described in section 3948, being on summit of coast range; thence, following said boundary-line on said summit, in a southeasterly direction, to a point in the same, which point is south forty-five degrees west from the point on King's river where northern line of township sixteen south crosses the same; thence north, forty-five degrees east, to said point on King's river; thence east, along northern line of township sixteen south, to the dividing ridge between the waters of King's river and Kawdah river; thence easterly, on the said dividing ridge, to the summit of the Sierra Nevada, being the western line of Inyo; thence northwesterly, on the summit line and lines of Inyo and Mono, to Mount Lyell, the common corner of Tuolumne, Mariposa, and Fresno; thence westerly and southwesterly, on the southeasterly line of Mariposa, as established in section 3938, to the place of beginning.

County seat—Millerton.

An Act to permanently locate the county seat of Fresno county.

Approved March 30, 1874; 1873-4, 913.

County seat.

SECTION 1. From and after the first day of October, A. D. 1874, the county

(a) The original section was the same, except that it did not have the words "of Tuolumne county."

seat of Fresno county shall be located at the town of Fresno; provided, the board of supervisors may have power to move said county seat to the said town of Fresno at any time prior to said first day of October, A. D. 1874, if in their judgment they may deem it necessary and advisable.

Buildings.

SEC. 2. The board of supervisors of Fresno county are authorized to forthwith proceed to erect suitable buildings in the town of Fresno for county purposes.

SEC. 3. This act shall take effect immediately.

An Act to establish the county line between the counties of Fresno and Tulare.

Approved March 27, 1874; 1873-4, 760.

[This act was virtually repealed by the operation of the following:]

An Act to establish the county line between the counties of Fresno and Tulare.

Approved March 23, 1876; 1875-6, 397.

Boundary-line between Fresno and Tulare counties.

SECTION 1. The boundary between the counties of Fresno and Tulare shall be as follows: Commencing at a point on the eastern boundary-line of Monterey county, as described in section 3948 of the Political Code, being on the summit of coast range, which point is south forty-five degrees west from the point on King's river where the northern line of township sixteen south crosses the same; thence north forty-five degrees east to said point on King's river; thence east along northern line of township sixteen south, and continuing on said line to the northwest corner of township sixteen south, range twenty-five (25) east; thence north to the northwest corner of township fifteen (15) south, range twenty-five (25) east; thence east to the northeast corner of township fifteen south, range twenty-seven (27) east; thence north to the northeast corner of township fourteen south of range twenty-seven east; thence east on the line between township thirteen and fourteen south to the summit of Sierra Nevada, being the western line of Inyo county.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

TULARE.

3940. *Tulare.*

SEC. 3940. Beginning at southwest corner, being common corner of Monterey, San Luis Obispo, Kern, and Tulare, and being the point where the line of the sixth standard south crosses the summit line of the Mount Diablo range of mountains; thence east, on said standard, to the point of intersection with summit line of the Sierra Nevada mountains, forming the southeast corner of Tulare and southwest corner of Inyo; thence northwesterly, on said summit, being on the western line of Inyo, to the east corner of Fresno, as established in section 3939; thence on the southern line of Fresno to the eastern line of Monterey; thence southerly, on the line of Monterey, as established in section 3948, to the place of beginning.

County seat—Visalia.

[For boundary-line between Tulare and Fresno counties, see ante, 3937.]

KERN.

3941. *Kern.*

SEC. 3941. Beginning at northwest corner, being common corner of San Luis Obispo, Monterey, Tulare, and Kern, as established in section 3940; thence east, on sixth standard south, Mount Diablo base, to the northwest corner of San Bernardino, as established in section 3943; thence south, on the westerly

line of San Bernardino, to southern line of township nine north, San Bernardino base, forming southeast corner; thence west along said line and extension thereof to the summit of the coast range, being on the line of Santa Barbara, forming southwest corner; thence northwesterly, on said summit line, being eastern line of Santa Barbara and San Luis Obispo, to the place of beginning.

County seat—Havilah.

INYO.

3942. *Inyo.*

SEC. 3942. Beginning at the southeast corner of Tularc, as established in section 3940, being the point of intersection of sixth standard south, Mount Diablo base, with summit line of Sierra Nevada mountains; thence east, by said standard and extension thereof, to the eastern line of the state, forming southeast corner; thence northwesterly, on state line, to the southeast corner of Mono, as established in section 3935; thence west on the southern line of Mono to the summit of the Sierra Nevada mountains, being on the eastern line of Fresno, and forming the southwest corner of Mono and northwest corner of Inyo; thence southeasterly on said summit line to the place of beginning.

County seat—Independence.

SAN BERNARDINO.

3943. *San Bernardino.*

SEC. 3943. Beginning at the southwest corner, a little northwesterly of Laguna Temecula, at a point on the northern line of San Diego, as established in section 3944, where a south line drawn from the highest peak of the Sierra de Santiago intersects the said boundary line; thence northwesterly on the summit of said Sierra to the Santa Anna river, between the ranch of Sierra and the residence of Bernardo Yerba; thence across the Santa Anna river along the summit of the range of hills that lie between the Cayotes and Chino (leaving the ranchos Gutiveras and Ybana to the west of this line) to the southwest corner of the ranch San Jose; thence northerly along the eastern boundaries of said ranch and of San Antonio and the western and northern boundaries of Cucaimonga ranch to the ravine of Cucaimonga; thence northerly up said ravine to its source in the coast range; thence north, on the easterly line of Los Angeles and Kern, to the sixth standard south, Mount Diablo base, being the northeast corner of Kern and northwest corner of San Bernardino; thence east by said standard line and extension thereof to the state line; thence southeasterly on said state line to the Colorado river; thence down said river to the northern boundary-line of San Diego county; thence westerly along the northern boundary-line of San Diego county, as established in section 3944, to the place of beginning.

County seat—San Bernardino.

SAN DIEGO.

3944. *San Diego.*

SEC. 3944. Beginning at south corner of Los Angeles in the Pacific ocean, opposite San Mateo point; thence northerly along the western line of rancho Santa Margarita to the southern line of Mission Viejo or La Paz; thence along the southern and eastern line of La Paz to a point two miles north of the south boundary-line of township seven south, range six west, San Bernardino base and meridian; thence northeasterly, to the southwest corner of San Jacinto Nuevo, in township four south, range four west; thence north along west boundary of said rancho to line between townships three and four south; thence east to line between ranges two and three west; thence north on range line to a point where a line parallel with the southern boundary between the United States and Mexico will just clear the rancho San Jacinto Viejo; thence north-

easterly along such parallel line to the Colorado river; thence down that river to its junction with the boundary-line between the United States and Mexico; thence westerly, following that boundary-line into the Pacific ocean; thence northerly to place of beginning.

County seat—San Diego.

LOS ANGELES.

3945. *Los Angeles.*

Sec. 3945. Beginning at southeast corner of Santa Barbara, in the Pacific ocean, at a point on extension line of the northern boundary of the rancho called Malaga, western corner; thence northeasterly, so as to include said rancho, to the northwest corner of the rancho called Triunfo, running on northerly line of the same to the northeast corner thereof; thence to the summit of the ridge of hills called Santa Susanna; thence in a direct line northwesterly, to the southwest corner of Kern, as established in section 3941, forming the northwest corner of Los Angeles; thence east, on southern line of Kern to the western line of San Bernardino, as established in section 3943; thence southerly, on western line of San Bernardino to its point of intersection with northern line of San Diego, as established in said section; thence southwesterly on San Diego line, as established in section 3944, to northwest corner of San Diego, in Pacific ocean; thence northwesterly, along ocean shore to place of beginning; including the islands of Santa Catalina, San Clement, and the islands off the coast included in Los Angeles county.

County seat—Los Angeles.

SANTA BARBARA.

3946. *Santa Barbara.*

Sec. 3946. Beginning at the western corner of Los Angeles, as established in section 3945; thence northerly, on westerly line of Los Angeles, as described in said section, to the northwest corner thereof, on the summit of the coast range, being also the southwest corner of Kern, as established in section 3941; thence northwesterly, on the summit line, being also on western boundary of Kern, to a point of intersection with the southern line of township ten north, San Bernardino base; thence west, on said township line, to the Santa Maria river; thence down said river, and down the creek which divides that part of Guadalupe rancho known as La Larga from that known as Oso Flacco, to a point in the Pacific ocean opposite the mouth of said creek, forming northwest corner; thence southeasterly, by the ocean shore, to the place of beginning; including the islands of Santa Barbara, San Nicolas, San Miguel, Santa Rosa, and Santa Cruz.

County seat—Santa Barbara.

[The county of Santa Barbara was divided and the new county of Ventura created out of the eastern portion by the following act:]

VENTURA.

An Act to create the county of Ventura, to establish the boundaries thereof, and to provide for its organization.

Approved, March 22, 1872; 1871-2, 484.

Ventura.

SECTION 1. There shall be formed out of the eastern part of Santa Barbara county a new county, to be called Ventura.

Boundaries.

SEC. 2. The boundaries of Ventura county shall be as follows: Commencing on the coast of the Pacific ocean, at the mouth of the Rincon creek; thence following up the centre of said creek to its source; thence due north to the north-

ern boundary-line of Santa Barbara county; thence in an easterly direction along the said boundary-line of Santa Barbara county to the northeast corner of the same; thence southerly along the line between the said Santa Barbara county and Los Angeles county to the Pacific ocean and three miles therein; thence in a northwesterly direction to a point due south of and three miles distant from the centre of the mouth of Rincon creek; thence north to the point of beginning, and including the islands of Anacapa and San Nicolas.

County seat.

SEC. 3. The seat of justice shall be at the town of San Buenaventura until otherwise provided by law.

Appointment of county judge.

SEC. 4. The governor of this state shall, when this act takes effect, appoint some suitable person, resident of Ventura county, to act as county judge of said county, whose term of office shall continue until the first day of January, one thousand eight hundred and seventy-four, and until his successor is elected and qualified, and who shall hold his office and reside at the county seat. There shall be chosen by the qualified electors thereof at the judicial election to be holden in the year eighteen hundred and seventy-three, and every four years thereafter, a county judge for Ventura county, whose term of office shall commence on the first Monday of January succeeding his election, and continue for the term of four years. Said county judge of Ventura county shall receive a salary of one thousand dollars per annum, to be paid quarterly. Said county judge shall hold the courts required by law to be held by county judges. There shall be three regular terms of the county court held in each year, said terms to commence on the first Monday in February, June, and October; provided, however, the county judge may call and hold special terms of the probate court whenever public necessity may require. Said county judge shall discharge all the duties required by law of county judges in this state.

Election of county officers.

SEC. 5. There shall be an election held in the county of Ventura within sixty days from the time of the first meeting of the commissioners. There shall be chosen at said election, by the qualified electors of said county, one district attorney; one county clerk, who shall be ex officio auditor, recorder, and clerk of the board of supervisors, and ex officio clerk of the county, probate, and district courts; one county superintendent of public schools; one sheriff, who shall be ex officio county tax collector; one county assessor; one county treasurer; one county surveyor; one county coroner, who shall be ex officio public administrator. Said county officers shall hold their respective offices until the first Monday in March, A. D. eighteen hundred and seventy-four, and until their successors are elected and qualified. There shall be chosen at said election, by the qualified electors thereof, one supervisor for each supervisor district in said county, who shall hold their offices as follows: District number one, until the first day of January, A. D. eighteen hundred and seventy-three; district number two, until the first day of January, A. D. eighteen hundred and seventy-four; and district number three, until the first day of January, A. D. eighteen hundred and seventy-five; provided, that all supervisors duly elected and qualified supervisors of Santa Barbara county, residents of Ventura county, shall hold their office for the term provided by law, upon having duly qualified as township officers of Ventura county. There shall be chosen at said election, by the qualified electors thereof, two constables and two justices of the peace for each township; provided, however, that all constables and justices elected at the general and judicial elections held in the year A. D. eighteen hundred and

seventy-one, residents of Ventura county, shall hold their offices for the time provided by law, upon having duly qualified as township officers of Ventura county for the respective townships in which they reside, as said townships are organized by the action of the board of commissioners provided for by this act. The term of office of the justice of the peace and constables of Ventura county shall be the same as in other counties in this state.

Board of commissioners.

SEC. 6. The governor shall, when this act takes effect, appoint five persons, residents of the proposed county, who shall be and constitute a board of commissioners to perfect the organization of the said county of Ventura, a majority of whom shall constitute a quorum. Said commissioners shall meet in the town of San Buenaventura within twenty days after their appointment, and after being duly sworn to faithfully discharge their duties as prescribed by this act, shall organize by electing from their number a president and clerk. They shall then divide said county into three townships, define their boundaries and designate the name of each. They shall also divide said county, by townships, into three supervisor districts, and number the same. They shall also establish election precincts, and appoint one inspector and two judges of election for each precinct in said county. They shall give thirty days' notice, by proclamation in some newspaper published in the county, or if there be no newspaper published in Ventura county, then said publication to be made in some newspaper published in the county of Santa Barbara, of the officers to be elected, the precincts established; and the officers of election of each shall also designate the boundaries of each district, with their names or numbers; also, bounds and number of each supervisor district. Said commissioners shall, on the second Monday after said election, meet at the county seat as a board of canvassers, and proceed to canvass the election returns. Said commissioners, their president and clerk, are hereby authorized and required to discharge the same duties as are now required by law of boards of supervisors and county clerks in the counties in this state, so far as the same applies to holding elections, canvassing election returns and issuing certificates of election. They shall keep a full record of all their proceedings, and file the same with the original election returns in the county clerk's office, as soon as he shall have been qualified, and thereupon the powers and duties of said commissioners shall cease and terminate.

Duties of supervisors.

SEC. 7. It shall be the duty of the board of supervisors of Ventura county, whose election is by this act provided for, to meet at the county seat on the first Monday of the month subsequent to their election and qualification, and elect the member from district number one chairman. They shall then allow such per diem and mileage to the commissioners and officers of election as they may think proper and just; and such allowance shall be paid by a warrant drawn in favor of each by the proper officers. Said board, or majority of them, shall then appoint two freeholders, residents of Ventura county, to act as a board of commissioners, whose duty it shall be to meet a like number of commissioners, appointed by the board of supervisors of Santa Barbara county, at a time and place agreed upon. Such joint commissioners shall then organize by appointing from their number a president and secretary, and shall immediately proceed to determine the indebtedness of said county at the time when this act takes effect. After ascertaining the total amount of indebtedness, they shall ascertain the total market value of the assets belonging to the county under consideration. They shall also ascertain the assessed value under the assessment of eighteen hundred and seventy-one of the property in the territory hereby set

apart to form Ventura county. Then, after deducting the total value of assets from the total amount of indebtedness, so as to ascertain the actual indebtedness, the proportion due from the county of Ventura shall be ascertained as follows: as the total assessed value of property in the territory taken from Santa Barbara county to form Ventura county is to the total assessed value of said county, so shall be the proportion of the actual indebtedness of Ventura county to Santa Barbara county; and when so ascertained said commissioners shall certify to their respective boards of supervisors such amount. The board of supervisors of Ventura county shall then cause to be issued the bonds of Ventura county, payable in five years from the organization of said county, to the county of Santa Barbara, for such sum as the commissioners certify to be due, bearing the same rate of interest as the county of Santa Barbara is now paying on such debt. Said board of supervisors shall procure and provide a suitable place or places to be used as a court-house and jail, and for the accommodation of the various county officers. They shall then, in accordance with the general laws governing boards of supervisors, levy state and county taxes; provided, that for the general fund they shall have power to levy not exceeding eighty cents on each one hundred dollars of taxable property in said county. They shall also levy a tax of ten cents upon each one hundred dollars of taxable property in said county, which shall be collected as other state and county taxes are collected; and when so collected the same shall be set apart pro rata as a sinking fund to liquidate the debt due from Ventura county to the county of Santa Barbara, affected by the creation of Ventura county; and when there shall be five hundred dollars or more placed to the credit of said county of Santa Barbara it shall be the duty of the board of supervisors of Ventura county to draw upon their own order such sum and purchase the warrants of said county of Santa Barbara; and upon presentation to the treasurer of the county of Santa Barbara he shall surrender a like amount of Ventura county bonds; said bonds shall then be canceled and on their face countersigned by the chairman of the board of supervisors and filed in the clerk's office. Said board of supervisors shall exercise such other powers and duties as are conferred by the general laws on boards of supervisors in the counties of this state. The levy of taxes for the first year shall be as effective as if levied at the time provided in the general law.

Transfer of actions.

SEC. 8. All civil actions, or proceedings in the nature of actions, whether original or upon appeal, civil or criminal, which shall be pending in the district court, county court, or probate court, in the county of Santa Barbara, at the time of the organization of Ventura county, in which the defendants are residents of Ventura county, shall be removed for trial and final determination to the proper courts of Ventura county on motion of any party interested; provided, that all actions commenced for the collection of taxes and licenses shall not be removed from the courts of Santa Barbara county; provided, further, that in all criminal causes, where the offense was committed within the present limits of Ventura county, upon the application of the district attorney of Ventura county, said causes shall be removed to Ventura county.

Transcript of records.

SEC. 9. All residents or property holders of the county of Ventura, upon application to the county recorder of the county of Santa Barbara, and upon the payment of the fees required by law, shall be entitled to receive a transcript of the record, duly attested, of any property situated in the county of Ventura, and recorded in his office; and upon presentation of said transcript to the county recorder of Ventura county, and upon the payment of the fees required

by law, said county recorder shall record the same, and said record shall have the full force and effect of the original record; provided, however, the board of supervisors of Ventura county shall, within two years, procure a suitable set of books, and make such arrangements as they may agree upon with the county recorder of Santa Barbara county for transcribing therein all necessary records, properly certified; said records to have the same effect and force of the original records; provided, that the expense of such records shall not exceed the sum of four thousand dollars.

Senatorial and judicial district.

SEC. 10. The county of Ventura shall be attached to and form a part of the third senatorial district, and for judicial purposes, shall be attached to and form a part of the first judicial district. The terms of the district court shall be held in and for the county of Ventura on the first Monday of March, July, and November of each year.

Election and bonds of officers.

SEC. 11. The county officers of Ventura county shall, except as otherwise provided by this act, be elected at the same time as the county officers in other counties of this state, and shall hold their offices for the term fixed by law. They shall give bonds for the faithful discharge of their duties, to be approved by the county judge, in the following sums: sheriff, in the sum of six thousand dollars; as ex officio county tax collector, in the sum of fourteen thousand dollars; the county clerk, and ex officio the recorder and auditor, in the sum of five thousand dollars; the assessor, in the sum of five thousand dollars; the county treasurer, in the sum of twenty thousand dollars; the county surveyor, in the sum of two thousand dollars; the coroner and ex officio public administrator, in the sum of five thousand dollars. The supervisors of Ventura county shall provide for the election of their successors, whose term of office shall be three years.

Duties of officers.

SEC. 12. All officers provided for by this act shall perform duties as required by the general laws of the state, unless otherwise provided by this act.

Salaries of supervisors.

SEC. 13. The supervisors of Ventura county shall receive for their services four dollars per day, and twenty-five cents per mile for coming to the county seat; provided, that for the year A.D. 1873, and every year thereafter, the per diem and mileage of any one supervisor shall not exceed the sum of two hundred dollars.

Salaries and fees of officers.

SEC. 14. The officers of Ventura county shall receive the following salaries and fees: the treasurer shall receive per annum the sum of six hundred dollars; the assessor shall receive per annum the sum of six hundred dollars; the district attorney the sum of five hundred dollars; the superintendent of public schools the sum of three hundred dollars. The fees of all other officers shall be the same as is provided for in an act to regulate fees of office, approved March 5, A.D. 1870, for similar officers in the county of Santa Barbara.

Notaries public.

SEC. 15. Ventura county shall be entitled to five notaries public, as provided for by law.

School superintendent.

SEC. 16. The superintendent of public schools of the county of Santa Barbara shall furnish the superintendent of public schools of Ventura county a certified copy of the last census lists of the different school districts in the terri-

tory set apart to form Ventura county, and shall draw his warrant on the treasurer of Santa Barbara county in favor of the superintendent of schools of Ventura county for all money that is or may be due by apportionment, or otherwise, to the different districts (school) of Ventura county.

Delinquent taxes.

SEC. 17. All delinquent taxes due the county of Santa Barbara at the time this act takes effect, from the persons or property in Ventura county, shall be paid to and collected by the proper officers of Ventura county, and the auditor of Santa Barbara county shall certify such delinquent taxes and tax list in duplicate to the collector and auditor respectively of Ventura county; they shall be collected by the officers of Ventura county in the same manner as delinquent taxes are collected in the other counties of the state.

Bonds.

SEC. 18. The supervisors may issue Ventura county bonds in a sum not to exceed in the aggregate twenty thousand dollars, bearing interest not to exceed ten per cent. per annum, payable in ten years from the date of their issuance; the principal and interest of said bonds to be paid in the gold coin of the United States; and may negotiate the same to provide a cash fund to be used in the payment of the first expenses of the county and the salaries of its officers. After the issuance of said bonds, no debt shall be created by the county of Ventura in excess of the amount of money in the treasury of said county.

SEC. 19. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

SEC. 20. This act shall take effect and be in force from and after the first day of January, 1873.

SAN LUIS OBISPO.

3947. *San Luis Obispo.*

SEC. 3947. Beginning in Pacific ocean, at northwestern corner of Santa Barbara, as established in section 3946; thence easterly, on the northern line of Santa Barbara, up the Santa Maria river, to intersection of southern line of township ten north, San Bernardino base; thence east on said line to point on summit of coast range, forming the southeast corner, also northeast corner of Santa Barbara; thence northwesterly on summit line, being western line of Kern, to its intersection with sixth standard south, Mount Diablo base, being the common corner of Tulare, Kern, Monterey, and San Luis Obispo; thence west on said standard line and extension thereof to the Pacific ocean; thence southerly along the shore to the place of beginning.

County seat—San Luis Obispo.

MONTEREY.

3948. *Monterey.*

SEC. 3948. Beginning in Pacific ocean, at southwest corner of Santa Cruz, as established in section 3949; thence west to the mouth of Pajaro river, on the bay of Monterey; thence up said stream to its source, the small lake San Felipe; thence along the northern and western banks of said lake to the creek San Felipe; thence east to the summit line of the coast range, forming northeastern corner; thence southeasterly along the summit of the coast range to the sixth standard south, Mount Diablo base, being the common corner of San Luis Obispo, Kern, Tulare, and Monterey; thence following the northern boundary of San Luis Obispo county, on said standard line and extension thereof, to the Pacific ocean; thence along the shore northerly to the place of beginning.

County seat—Monterey.

[The county of Monterey was divided and the new county of San Benito created out of the eastern portion by the following act:]

SAN BENITO.

An Act to create the county of San Benito, to establish the boundaries thereof and to provide for its organization.

Approved, February 12, 1874; 1873-4, 95.

San Benito county.

SECTION 1. There shall be formed, out of the eastern part of Monterey county, a new county, to be called San Benito.

Boundaries.

SEC. 2. The boundaries of San Benito county shall be as follows: Commencing at a point in the centre of Pajaro river, said point being the northwest corner of the Rancho las Arromitas y Agua Caliente, and being on the northern boundary-line of Monterey county, and running thence in a southerly direction along the southwest boundary of said rancho to the southwest corner thereof; thence southerly in a direct line to the northwest corner of the Rancho las Vergelos; thence southerly in a direct line to the summit of the Gavilan range of mountains; and thence southeasterly along the summit of said Gavilan mountains to the Chalon peak; thence southeasterly in a direct line to the division line of the parts of the San Lorenzo Sobrantes owned respectively by Breen and Dunn; thence along said dividing line of said rancho to the southern boundary thereof; thence due south to the San Lorenzo creek; thence southeasterly up said San Lorenzo or Lewis creek, and up the north fork thereof, to the summit of the divide between the waters of said Lewis creek and San Benito creek; thence, following said divide southerly, to the eastern boundary of Monterey county, and the summit of the coast range of mountains; thence northerly, following the summit of said mountains, to the southern boundary-line of Santa Clara county; thence westerly, following the southern boundary-line of Santa Clara county, to the place of beginning.

County seat.

SEC. 3. The seat of justice shall be at the town of Hollister, until otherwise provided by this act.

Appointment of county judge—Salary—Terms of county and probate courts.

SEC. 4. The governor of this state shall, when this act takes effect, appoint some suitable person, resident of San Benito county, to act as county judge of said county, whose term of office shall continue until the first Monday of January, one thousand eight hundred and seventy-six, and until his successor is elected and qualified, and who shall hold his office and reside at the county seat. There shall be chosen by the qualified electors thereof, at the judicial election to be holden in the year eighteen hundred and seventy-five, and every four years thereafter, a county judge for San Benito county, whose term of office shall commence on the first Monday of January succeeding his election, and continue for the term of four years. Said county judge of San Benito county shall receive a salary of twelve hundred dollars per annum, to be paid monthly. Said county judge shall hold the courts required by law to be held by county judges. There shall be four regular terms of the county court held in each year, said terms to commence on the first Monday in February, May, August, and November; provided, however, the county judge may call and hold special terms of the probate court, whenever public necessity may require. Said county judge shall discharge all the duties required by law of county judges in this state.

Election and officers.

SEC. 5. There shall be an election held in the county of San Benito within sixty days from the first meeting of the commissioners hereinafter provided for. There shall be chosen at said election, by the qualified electors of said county,

one district attorney; one county clerk, who shall be ex officio auditor, recorder, and clerk of the board of supervisors, and ex officio clerk of the county, probate, and district courts; one county superintendent of public schools; one sheriff, who shall be ex officio county tax collector; one county assessor; one county treasurer; one county surveyor; one county coroner, who shall be ex officio public administrator. Said county officers shall hold their respective offices until the first Monday in March, A. D. eighteen hundred and seventy-six, and until their successors are elected and qualified. There shall be chosen at the same election, by the qualified electors thereof, one supervisor for each supervisor district in said county, who shall hold their offices as follows: District number one, until the first Monday in January, A. D. eighteen hundred and seventy-five; district number two, until the first Monday in January, A. D. eighteen hundred and seventy-six; and district number three, until the first Monday in January, A. D. eighteen hundred and seventy-seven. There shall be chosen at said election, by the qualified electors thereof, two constables for each township, and one road overseer for each road district in said county; provided, that all the justices of the peace, elected at the judicial election held in the year A. D. eighteen hundred and seventy-three, residents of San Benito county, shall hold their offices for the time provided by law, upon having duly qualified as justices of the peace of San Benito county for the respective township in which they severally reside, as said townships are organized by the action of the board of commissioners provided for by this act. The terms of offices of justices of the peace, constables, and road overseers of San Benito county, shall be the same as in other counties of this state. At said election shall also be submitted to the qualified electors the permanent location of the county seat of said San Benito county, and the place receiving the highest number of votes therefor shall be declared by the commissioners the permanent county seat of said county.

Commissioners and duties.

SEC. 6. The governor shall, when this act takes effect, appoint five persons, residents of the proposed county, who shall be and constitute a board of commissioners to perfect the organization of said San Benito county, a majority of whom shall constitute a quorum. Said commissioners shall meet in the town of Hollister, within twenty days after their appointment, and after being duly sworn to faithfully discharge their duties as prescribed by this act, shall organize, by electing from their number a president and clerk. They shall then divide said county into townships, define their boundaries, and designate the names of each. They shall also divide said county by townships into three supervisor districts, and number the same. They shall also establish election precincts, and appoint one inspector and two judges of election for each precinct in said county. They shall give thirty days' notice, by proclamation in some newspaper published in the county, of the officers to be elected, the precincts established, the officers of election, and shall designate the boundaries of each district, with their names and numbers. Said commissioners shall, on the second Monday after said election, meet at the county seat as a board of canvassers, and proceed to canvass the election returns. Said commissioners, their president and clerk, are hereby authorized and required to discharge the same duties as are now required by law of boards of supervisors and county clerks, in counties in this state, so far as the same applies to holding elections, canvassing election returns, and issuing certificates of election. They shall keep a full record of all their proceedings, and file the same with the original election returns, in the county clerk's office, as soon as he shall have been qualified, and thereafter the powers and duties of said commissioners shall cease and determine.

Supervisors, their powers and duties.

SEC. 7. It shall be the duty of the board of supervisors of San Benito county, whose election is by this act provided for, to meet at the county seat on the first Monday of the month subsequent to their election and qualification, and elect the member from district number one chairman. They shall then allow such per diem and mileage to the commissioners and officers of election as they may think proper and just, and such allowance shall be paid by a warrant drawn in favor of each by the proper officers. The board of supervisors shall procure and provide a suitable building or buildings, to be used as a court-house and jail, and for the accommodation of the various county officers; and for such purposes, they are hereby authorized to rent, or purchase, or construct suitable buildings. And in case of purchase or construction, said board are authorized to issue bonds of said county, not exceeding the sum of twenty thousand dollars, bearing ten per cent. per annum interest, and payable within such times as the board may direct, not exceeding fifteen years from the date of issue thereof; and, provided, that said bonds shall not be disposed of or sold on behalf of said county for a less sum than ninety cents on the par value thereof. The board shall, in accordance with the general laws governing boards of supervisors, levy state and county taxes; provided, that for the general fund they shall have power to levy not exceeding ninety cents on each one hundred dollars of value of taxable property in said county. They may also levy a tax not exceeding ten cents upon each one hundred dollars of value of the taxable property of said county, which, when collected, shall be set aside and known as the "Contingent Fund," and which shall be used exclusively for the payment of necessary repairs upon county buildings, for the purchase of record books, stationery, fuel, and lights for county offices; and, in case of the purchase or construction of county buildings, and the issue of bonds in payment therefor, then the board of supervisors are further authorized to make an additional levy, not exceeding twenty cents on each one hundred dollars of value of taxable property of said county, which, when collected, shall be set aside and known as the "Building Fund," and shall be used only in the redemption of bonds issued for the purpose of purchasing or constructing county buildings and paying yearly interest thereon.

Actions removed.

SEC. 8. All actions, or proceedings in the nature of actions, whether original or upon appeal, civil or criminal, which shall be pending in the district court, county court, or probate court, in the county of Monterey, at the time of the organization of San Benito county, where the defendants therein reside in said San Benito county, shall be removed for trial and final determination to the proper courts of San Benito county, on motion of any party interested; and, provided, that all criminal causes where the offense was committed within the limits of San Benito county, shall, upon application of the district attorney of San Benito county, be removed to San Benito county.

Transcription of records.

SEC. 9. The board of supervisors of San Benito county are hereby authorized to contract with some competent person for transcribing from the records of Monterey county such parts thereof as relate to property situated in San Benito county, and for such purpose shall provide suitable books; and said records, when so transcribed and certified, shall have the same force and effect as such original records. The person so employed shall have access to said records of Monterey county for said purpose of transcribing the same. The compensation for said services shall be fixed and allowed by the board of supervisors of San Benito county, and paid out of the general fund of said county.

Judicial district.

SEC. 10. The county of San Benito shall be attached to and form a part of the twentieth judicial district.

Official bonds.

SEC. 11. The county officers of San Benito county shall, except as otherwise provided by this act, be elected at the same time as county officers in other counties of this state, and shall hold their offices for the term fixed by law. They shall give bonds for the faithful discharge of their duties, to be approved by the county judge, in the following sums: the sheriff, in the sum of eight thousand dollars, and as ex officio county tax collector, in the sum of twenty-five thousand dollars; the county clerk, in the sum of five thousand dollars, and as ex officio recorder and auditor, in the sum of five thousand dollars each; the county treasurer, in the sum of thirty thousand dollars; the district attorney, in the sum of four thousand dollars; the county surveyor, in the sum of three thousand dollars; the coroner and ex officio public administrator, in the sum of five thousand dollars; each supervisor, in the sum of two thousand dollars; and each justice of the peace, constable, and road overseer, in the sum of two thousand dollars. The supervisors of San Benito county shall provide for the election of their own successors, whose term of office shall be three years.

Duties.

SEC. 12. All officers provided for by this act shall perform duties as required by the general laws of the state, unless otherwise provided by this act.

Salaries.

SEC. 13. The officers of San Benito county shall receive the following salaries and fees: the treasurer shall receive, per annum, the sum of one thousand dollars; the district attorney, the sum of twelve hundred dollars; the superintendent of public schools, the sum of five hundred dollars; the assessor, the sum of one thousand dollars per annum; and each member of the board of supervisors shall receive a per diem of five dollars for each day's services as a member of the board, and twenty-five cents per mile in going to the county seat to attend the sessions of said board. The fees and salaries of all officers, except as herein specially named, shall be the same as now allowed said officers in Monterey county for like services.

Notaries.

SEC. 14. San Benito county shall be entitled to five notaries public as provided for by law.

School census lists and moneys.

SEC. 15. The superintendent of public schools of the county of Monterey shall furnish the superintendent of public schools of San Benito county with a certified copy of the last school census lists of the different school districts in the territory set apart to form San Benito county, and shall draw his warrant on the treasurer of Monterey county in favor of the superintendent of schools of San Benito county, for all money that is or may be due by apportionment or otherwise to the different school districts of San Benito county, and the auditor of Monterey county shall in like manner draw his warrant in favor of the auditor of San Benito county for all money that is or may be due by apportionment or otherwise to the different road district funds in the territory set apart to form San Benito county, and said money shall be paid into the treasury of San Benito county, and be properly credited to the respective districts in said county.

Delinquent taxes.

SEC. 16. All delinquent taxes due to the county of Monterey at the time this act takes effect, from the persons or property in San Benito county, shall be paid to and collected by the proper officers of San Benito county, and the auditor of Monterey county shall certify such delinquent taxes and tax lists in duplicate to the collector and auditor respectively of San Benito county. They shall be collected by the officers of San Benito county in the same manner as delinquent taxes are collected in other counties in this state.

SEC. 17. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

SEC. 18. This act shall take effect and be in force from and after its passage.

An Act supplementary to the foregoing act of February 12, 1874.

Approved March 18, 1874; 1873-4, 428.

[This act provided for a board of commissioners to determine the amount of indebtedness as between San Benito and Monterey counties, and for ways and means to pay the same by the issue of bonds by the county found to be indebted. It also provided for the terms of the district, county and probate courts in San Benito county.

It was amended by act of March 10, 1876; 1875-6, 177, in so far as related to the commissioners, issue of bonds and compensation of commissioners.]

SANTA CRUZ.

3949. *Santa Cruz.*

SEC. 3949. Beginning at the south corner of San Mateo county, at a point in the Pacific ocean south forty-five degrees west, three miles from the intersection of the east line of rancho Punta del Año Nueva with said ocean, forming western corner; thence north, forty-five degrees east, to said point of intersection; thence northerly, following the eastern line of said rancho, to its intersection with the south line of township eight south, range four west, Mount Diablo base and meridian; thence east to the southeast corner of said township; thence north to the northeast corner of section twenty-five of said township; thence east to the northeast corner of section twenty-six, township eight south, range three west; thence north to the summit of Santa Cruz mountains, being western line of Santa Clara county; thence southeasterly along the summit of said mountains, on the western line of Santa Clara, to the Pajaro river, forming southeast corner, on north line of Monterey; thence westerly along said river, on northern line of Monterey, to the bay of Monterey, and three miles westerly into the ocean, forming southwest corner; thence northwesterly along the shore to the point of beginning.

County seat—Santa Cruz.

SAN FRANCISCO (CITY AND COUNTY).

3950. *San Francisco.*

SEC. 3950. Beginning at the southwest corner, being northwest corner of San Mateo, in Pacific ocean, on the extension of northern line of township three south, of Mount Diablo base; thence northerly along the Pacific coast to its point of intersection with westerly extension of low water line on northern side of the entrance to San Francisco bay, being southwest corner of Marin and northwest corner of San Francisco; thence easterly, through Point Bonita and Point Caballo, to the most southeastern point of Angel island, all on the line of Marin, as established in section 3957; thence northerly, along the easterly line of Marin, to the northwest point of Golden rock (also known as Red rock), being a common corner of Marin, Contra Costa, and San Francisco; thence due southeast four and one half miles, more or less, to a point distant three statute

miles from the natural high water mark on the eastern shore of San Francisco bay, being a common corner of Contra Costa, Alameda, and San Francisco; thence southeasterly, in a direct line, to a point three miles from said eastern shore, and on the line first-named (considered as extending across said bay); and thence west along said first-named line to the place of beginning. The islands known as the Farralones shall be attached to and be a part of said city and county.

SAN MATEO.

3951. *San Mateo.*

SEC. 3951. Beginning at the southwest corner, being west corner of Santa Cruz county, as established in section 3949; thence on northwestern line of Santa Cruz, as established in said section, to the southwestern line of Santa Clara, being the summit line of the Santa Cruz mountains; thence northwesterly, by said summit line, to the source of San Francisquito creek; thence down the south branch thereof, and down said creek to its mouth; thence to a point in the middle of San Francisco bay, opposite said mouth, forming common corner of San Mateo, Santa Clara, and Alameda; thence in a direct line to the southeast corner of San Francisco city and county, as established in section 3950; thence due west, on southern line of San Francisco city and county, to the southwest corner thereof; thence southerly, along the ocean shore, to the point of beginning.

County seat—Redwood city.

SANTA CLARA.

3952. *Santa Clara.*

SEC. 3952. Beginning at a point opposite the mouth of San Francisquito creek, being common corner of Alameda, San Mateo, and Santa Clara, as established in section 3951; thence easterly, to a point at the head of a slough, which is an arm of the bay of San Francisco, at its head, making into the main land in front of the Gegara ranches; thence easterly, to a lone sycamore tree that stands in a ravine between the dwellings of Fluhencia and Valentine Gegara; thence easterly, up said ravine, to the top of the mountains, and as surveyed by Horace A. Higley, and shown on survey and map of Alameda county, eighteen hundred and fifty-seven; thence on a direct line easterly, to the common corner of San Joaquin, Stanislaus, Alameda, and Santa Clara, on the summit of the coast range, as established in section 3932; thence southeasterly, following the summit of the coast range, to the northeast corner of Monterey county, as established in section 3948; thence westerly, following the northern boundary of Monterey county to the southeast corner of Santa Cruz county, as established in section 3949; thence northwesterly, following the summit of the Santa Cruz mountains, to the head of San Francisquito creek; thence down said creek, to its mouth; thence in a direct line to the place of beginning.

County seat—San Jose.

ALAMEDA.

3953. *Alameda.*

SEC. 3953. Beginning at the southwest corner, being the common corner of San Mateo, Santa Clara and Alameda, as established in section 3951; thence easterly, on northerly line of Santa Clara, as established in section 3952, to common corner of San Joaquin, Stanislaus, Santa Clara and Alameda, as established in section 3932; thence northwesterly, on the west line of San Joaquin county, to the slough known as the Pescadero, being the west channel or old San Joaquin river; thence westerly, in a straight line, until it strikes the dividing ridge, in the direction of the house of Joze Harlan, in Amador valley;

thence westerly along said ridge, crossing the gulch one half mile below Prince's mill; thence to and running upon the dividing ridge between the red-woods known as the San Antonio and Prince's woods; thence along said ridge to the head of the gulch or creek (Cerrito creek) that divides the ranches of the Peraltas from the San Pablo ranches; thence down said gulch to its mouth; thence southwesterly to the common corner of San Francisco, Contra Costa and Alameda, as established by section 3950; thence southerly to a point in the bay of San Francisco that would intersect a line parallel with the north line of the Central Pacific railroad company's wharf (as it now is) if extended westerly five hundred feet toward Yerba Buena island; thence southeasterly in a line parallel with the east line of the city and county of San Francisco (which is the line now dividing said city and county from the county of Alameda) to its intersection with the south line of said city and county, as established in section 3950; thence easterly along said last-mentioned line to the northeast corner of San Mateo; and thence southeasterly along the eastern line of San Mateo to the place of beginning. Horace A. Higley's survey and map of Alameda County, 1857, are declared to contain a more particular description of the line out of the bay of San Francisco.

County seat, city of Oakland; provided that nothing in this act contained shall be construed to place "Yerba Buena island," or any part thereof, outside the limits of the city and county of San Francisco, but the same shall be deemed to be within said city and county, and the westerly boundary-line of the county of Alameda shall not come within two thousand and five hundred feet of any part of said island. [*Amendment, approved March 30, 1874; Amendments 1873-4, 168; took effect sixtieth day after passage.*^(a)]

CONTRA COSTA.

3954. *Contra Costa.*

SEC. 3954. Beginning in bay of San Francisco, at the northwest point of Red rock, being the common corner of Marin, Contra Costa, and San Francisco, as established in section 3950; thence up the straits and bay of San Pablo, on eastern boundary of Marin, to point of intersection with line bearing south twenty-six and one half degrees east, and about six and one quarter miles distant from southwest corner of Napa county, as established in section 3958, forming common corner of Marin, Solano, Sonoma, and Contra Costa, as established in section 3955; thence to the straits of Carquinez; thence up said straits and Suisun bay, to the mouth of the San Joaquin river; thence up said river, to the confluence of the west and main channels thereof, as laid down on Gibbe's map; thence up the said west channel, to a point about ten miles below Moore and Rhodes' ranch, at a bend where the said west channel, running downward, takes a general course north, the point being on the westerly line of San Joaquin county, and forming the northeast corner of Alameda and southeast corner of Contra Costa; thence on the northern line of Alameda, as laid down on Horace A. Higley's map, and as established in section 3953, to the easterly line of San Francisco city and county, as established in section 3950; thence due northwest, along said easterly line of San Francisco, four and one half miles, more or less, to the place of beginning.

County seat—Martinez.

(a) The original section after the words "down said gulch to its mouth," proceeded as follows: "thence westerly to the easterly line of San Francisco, as established in section 3950, thence southeasterly along the eastern line of San Francisco and San Mateo to the

place of beginning. Horace A. Higley's survey and map of Alameda County, 1857, are declared to contain a more particular description of the line out of the bay of San Francisco. County seat—San Leandro."

SONOMA.

3955. *Sonoma.*

SEC. 3955. Beginning at northwest corner, at a point in the Pacific ocean west of the mouth of Walhalla river; thence east to the mouth of said river, and up the main channel two miles; thence easterly in a direct line to the most northern and highest peak or summit of the Redwood mountains, immediately north of Cloverdale and Oat valley; thence east to the western boundary of Lake county, on the summit of the Mayacmas ridge, forming northeast corner; thence southerly along the Mayacmas mountains, and on the western lines of Lake and Napa counties, to the westerly branch of headwaters of Huichica creek; thence westerly on the line of Napa county to the top of the main ridge that divides the Huichica valley from the Sonoma valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo bay; thence southerly to the centre of Huichica creek; thence down said creek to its mouth, which is the southwest corner of Napa; thence on the line of Solano south, twenty-six and one half degrees east, about six and one quarter miles distant from the mouth of Huichica creek, to the point of intersection with the westerly line of Contra Costa county, forming common corner of Marin, Solano, Contra Costa, and Sonoma, as described in section 3954; thence following the northern boundary of Marin westerly to the mouth of Petaluma creek; thence up said creek to the mouth of San Antonio creek; thence up said San Antonio creek to its head; thence in a direct line to the head of the Estero Americano, on the line surveyed and established by William Mock, under the direction of the surveyor-general, in the year eighteen hundred and fifty-six; thence down said Estero Americano to its mouth; thence due west three miles to a point in the Pacific ocean; thence northwesterly by ocean shore to the point of beginning.

County seat—Santa Rosa.

SOLANO.

3956. *Solano.*

SEC. 3956. Beginning at southwest corner, in San Pablo bay, at common corner of Contra Costa, Sonoma, Marin, and Solano, as established in section 3954; thence north, twenty-six and one half degrees west, about six and one quarter miles on the western line of Sonoma, as established in section 3955, to the southwest corner of Napa, at the mouth of the Huichica creek; thence east, on southern line of Napa, to the southeast corner thereof, as established in section 3958; thence north, on line of Napa, as established in said section, to the first standard north; thence east, along said standard, on said Napa line, to the summit of Vaca mountains; thence northerly, on said summit and Napa line, to Devil's Gate, on Putah creek, which point forms the northwest corner of Solano and southwest corner of Yolo; thence easterly, on line of Yolo, down said creek and old bed thereof, to its intersection with western line of range three east, Mount Diablo meridian, forming the northeast corner of Solano, with exterior angle in Yolo; thence south, along line of Yolo, on said range line, two and seven tenths miles, to the north line of township seven north, Mount Diablo base; thence east, nine and seventy-two one hundredths chains, to northeast corner of said township; thence south, to the first standard north, Mount Diablo base; thence east, on said standard line, to the centre of Sutter slough; thence down said slough to Merritt slough, down Merritt slough to the Sacramento river, down the Sacramento river about thirteen miles to Suisun bay; thence down the bay, along the centre of the main ship channel, in a westerly course, about eighteen miles, to the straits of Carquinez; thence down the middle of said straits, and down San Pablo bay, to the place of beginning.

All these courses and lines being as shown by map and notes of William Wayne Fitch and E. H. Marshall, surveyor and deputy surveyor of Solano county.

County seat—Fairfield.

An Act to locate the county seat of Solano county.

Approved March 28, 1874; 1873-4, 783.

County seat.

SECTION 1. The county seat of Solano county shall be at Fairfield, in said county.

Removal.

SEC. 2. The board of supervisors of Solano county, within twenty days from the passage of this act, shall cause the archives, county records, books, maps, papers, furniture, and all other movable personal property belonging to said county, to be removed to the county seat established by this act; and for the purpose of executing this provision, a special meeting of said board shall be called in the manner prescribed by law.

SEC. 3. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

MARIN.

3957. *Marin.*

SEC. 3957. Beginning in the Pacific ocean, at southwestern corner of Sonoma; thence southeasterly along southern line of Sonoma, as established in section 3955, to the mouth of Petaluma creek; thence to common corner of Marin, Sonoma, Contra Costa, and Solano, in San Pablo bay, as established in section 3955; thence southerly along the western boundary of Contra Costa, in the bay of San Pablo, to the middle of the straits of San Pablo; thence southerly, in a direct line, to Invincible rock, in the bay of San Francisco, near the entrance of the straits of San Pablo; thence, in a direct line, to northwestern point of Red rock; thence southerly to the extreme southeasterly point of Angel island; thence southwesterly to the extreme end of Point Cavallo at low water mark; thence on the line of low water mark along the northern shore of the bay to Point Bonita, and three miles into the Pacific ocean, to the northwestern corner of San Francisco, as established in section 3950; thence northwesterly by ocean shore to the place of beginning.

County seat—San Rafael.

NAPA.

3958. *Napa.*

SEC. 3958. Beginning at southwestern corner, at a point in Huichica creek where the said creek empties into San Pablo bay; thence east to the mountains dividing Napa valley from Suisun valley, forming southeastern corner; thence northerly along the summit line of said mountains to its intersection with the first standard north, Mount Diablo base, marked by a rock monument erected by Ralph Norris; thence east along said standard line seven and three fourth miles to Vaca mountains, which divide the Vaca and Suisun valleys; thence northerly along the main ridge of said Vaca mountains to Putah creek, at a point called the Devil's Gate; thence northerly across said creek to and along the mountains dividing Berryessa valley from Sacramento valley to the southeast corner of Lake county on the western line of Yolo; thence westerly along the southern line of Lake, as established in section 3917, to its intersection with the eastern line of Sonoma; thence southeasterly on said line of Sonoma to the western branch of the headwaters of the Huichica creek; thence westerly to the main ridge that divides the Huichica valley from the Sonoma valley; thence southerly along the said dividing ridge to the tule bordering on San Pablo bay;

thence southerly to the centre of the Huichica creek; thence down said creek to its mouth, the place of beginning.

County seat—Napa city.

An Act to define the northern boundary-line of Napa county, adjoining Lake and Yolo counties.

Approved March 8, 1872; 1871-2, 305.

Description of boundary-line.

SECTION 1. The northern boundary-line of Napa and the southeasterly boundary-line of Lake counties shall commence at the highest point of the Mount St. Helena; thence running in an easterly direction along the present boundary-line between said counties to the Buttes Cañon road; thence northeasterly in a direct line to the junction of Jericho and Putah creeks; thence up Jericho creek to the junction of Hunting creek, in Jericho valley; thence up Hunting creek to a large pile of rocks on the southeasterly side of the county road, at the lower and most easterly end of Hunting valley; thence in a straight line in the direction of the intersection of Bear and Cache creeks to the county line of Yolo county; thence along the line of Yolo county in a southeasterly direction to the present county line dividing Yolo and Napa counties.

Payment of claim of Lake county.

SEC. 2. The board of supervisors of Napa county shall order paid the claim of Lake county for the sum of thirty-five hundred dollars, and the auditor of said county of Napa shall draw a warrant for the same on the treasurer of the said county, payable from the general fund, and the treasurer of Napa county shall pay the same.

SEC. 3. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 4. This act shall take effect from and after its passage.

CHAPTER II.

GENERAL PROVISIONS RELATING TO COUNTIES.

3369. *Disputed boundaries, how settled.*

SEC. 3969. All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the boards of supervisors of such counties, or by a survey made by the surveyor-general, on application of the board of supervisors of any county affected thereby.

3370. *Report to surveyor-general on disagreement of supervisors.*

SEC. 3970. If the first mode is adopted, and the board of supervisors do not agree upon and finally approve the survey, each surveyor must make a report to the surveyor-general, with surveys, maps, notes, and explanations touching disputed points.

3371. *Surveyor-general to determine boundary.*

SEC. 3371. Upon such reports the surveyor-general must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys establish such common boundaries and corners.

3972. *Approved surveys to be conclusive.*

SEC. 3972. All surveys finally approved under the provisions of this chapter are conclusive ascertainties of lines and corners included therein.

3973. *Former surveys valid.*

SEC. 3973. All surveys and maps of boundary-lines heretofore legally made and approved, are declared valid, and they are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this code. [*Amendment, approved March 30, 1874; Amendments 1873-4, 54; took effect July 6, 1874.*^(a)]

3974. *Cost of survey to be apportioned equally among counties interested.*

SEC. 3974. The cost of making such surveys must be apportioned equally among the counties interested, and the board of supervisors must audit the same, and the amounts must be paid out of the general county fund.

3975. *Which county owns real property when county is divided.*

SEC. 3975. When a county is divided or the boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.

3976. *Petition for change of county seat.*

SEC. 3976. Whenever the inhabitants of any county of this state desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they may present a petition to the board of supervisors of their county, praying such removal, and that an election be held to determine to what place such removal must be made.

3977. *Supervisors to order election.*

SEC. 3977. If the petition is signed by qualified electors of the county, equal in numbers to at least three fifths of all the votes cast in the county at the last preceding general election, the board must, within five days after receiving such petition, order an election, naming the day on which it must be held, not more than sixty nor less than thirty-five days from the time of calling it, specifying its object. [*Amendment, approved March 30, 1874; Amendments 1873-4, 170; took effect July 1, 1874, in San Mateo county, and in other counties from passage.*^(b)]

3978. *Notice of election.*

SEC. 3978. Notice of not less than twenty-five days must be given of the election, by posting notices thereof in each election precinct within the county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 55; took effect July 6, 1874.*]

3979. *Election, how held and conducted.*

SEC. 3979. The election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to elections for county officers.

3980. *Voter to vote for place he prefers.*

SEC. 3980. In voting on the question, each elector must vote for the place in the county which he prefers as the seat of justice, plainly designating it in his ballot.

3981. *Notice of result.*

SEC. 3981. When the returns have been received and compared, and the results ascertained by the board, if a majority of all the votes cast are in favor of any particular place, the board must give notice of the result by posting notices

(a) The original section had the word "primary" instead of "prima facie."

(b) The original section instead of the words "three fifths" had "one third." It was amended by another act of March 30, 1874 (Amendments 1873-4, 54), so as to require the petition to be signed by electors "whose names appear on the preceding assess-

ment-roll, equal in number to at least one half of all the votes;" but this amendment was superseded by the amendment in the text. See post.

(c) The original section required notice to be given by "publication in some newspaper, if there is one published in the county, and by posting notices thereof in at least five public places in the county."

thereof in all the election precincts in the county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 55; took effect July 6, 1874.*^(a)]

3982. *Place chosen to be county seat.*

SEC. 3982. In the notice provided for in section 3981, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice the place chosen is the county seat of the county.

3983. *Statement of result.*

SEC. 3983. Whenever any election has been held as provided for in the preceding sections of this chapter, the statement made by the board of supervisors, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by section 3982, they must transmit a certified copy thereof to the secretary of state.

3984. *No second election to be held within one year.*

SEC. 3984. When the election has been held and a majority of the votes are cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within two years thereafter.

3985. *Subsequent removal of county seat.*

SEC. 3985. When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this chapter; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by qualified electors of the county equal in number to at least three fourths of all the votes cast at the next preceding general election; nor unless at such election, when ordered, two thirds of all the votes cast are in favor of some other place as the county seat of the county; and such election, when so ordered, shall take place at the first general election held thereafter, nor must two elections to effect such removal be held within four years. [*Amendment, approved February 3, 1876; Amendments 1875-6, 64; took effect from passage.*^(b)]

TITLE II.

The Government of Counties.

CHAPTER I. COUNTIES AS BODIES CORPORATE.....	4000
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(a) The original section required the board to give notice of the result "by publication in some newspaper, if there is one printed in the county; if not, then by causing notices thereof to be posted in not less than five public places."

(b) Original section:

SEC. 3985. When the county seat of a county has been once removed, it may be again removed, from time to time, in the manner prescribed by this chapter; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by one third of all the electors of the county registered on the great register thereof; nor unless, at such election, when ordered, a majority of all the votes cast are in favor of some other place as the county seat

of the county; nor must two elections to effect such removal be held within any three years.

It was previously amended by act of March 30, 1874; Amendments 1873-4, 55, so as instead of the words "one third of all the electors of the county registered on the great register thereof," to read "two thirds of all the qualified electors whose names appear on the preceding assessment-roll of the county, and are registered on the great register thereof." This amendment was superseded by an amendment adopted the same day, March 30, 1874; Amendments 1874-1, 170, which instead of the above clause had the words "qualified electors of the county, equal in number to at least three fourths of all the votes cast at the next preceding election."

CHAPTER I.

COUNTIES AS BODIES CORPORATE.

4000. *Every county a body corporate.*

Sec. 4000. Every county is a body politic and corporate, and as such has the powers specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.

4001. *Powers of counties, how exercised.*

Sec. 4001. Its powers can only be exercised by the board of supervisors, or by agents and officers, acting under their authority, or authority of law; provided, however, that whenever any board of supervisors shall, without authority of law, order any money paid as a salary, fees, or for other purposes, and such money shall have been actually paid; or whenever the county clerk or county auditor has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of supervisors, or by the law, and the same shall have been paid, the district attorney of such county is hereby empowered, and it is hereby made his duty, to institute suit in the name of the county, against such person or persons, to recover the money so paid, and twenty per cent. damage for the use thereof: and no order of the board of supervisors therefor shall be necessary in order to maintain such suit; and provided further, that when the money has not been paid on such orders, it is hereby made the duty of the district attorney of such county to commence suit in the name of the county for restraining the payment of the same, and no order of the board of supervisors therefor shall be necessary in order to maintain such suit. [Amendment, approved March 24, 1874; Amendments 1873-4, 171; took effect from passage.^(a)

4002. *Name and designation.*

Sec. 4002. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

4003. *Enumeration of powers.*

Sec. 4003. It has power:

1. To sue and be sued;
2. To purchase and hold lands within its limits;
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers;
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;
5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

4004. *Limitation on powers—Lending credit.*

Sec. 4004. No county must in any manner loan or give its credit to or in aid of any person unless it is expressly authorized by law so to do.

4005. *Same—Temporary loans.*

Sec. 4005. No money must be borrowed on a temporary loan by any county except in anticipation of the taxes of the current fiscal year, and the same must always be made payable within eight months from the time of making the loan.

4006. *Classification of counties.*

Sec. 4006. For purposes other than for roads and highways the counties of this state are classified as follows:

(a) The original section did not have the proviso.

1. Those containing twenty thousand inhabitants or over constitute the first class;
2. Those containing eight thousand and under twenty thousand inhabitants constitute the second class; and,
3. Those containing less than eight thousand inhabitants constitute the third class.

4007. *Same.*

SEC. 4007. Whenever a new census is taken, the counties, on the first day of July next thereafter, are, by operation of law, classified under such census.

CHAPTER II.

THE BOARD OF SUPERVISORS.

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ARTICLE I.

ORGANIZATION AND TERMS OF THE BOARD.

4022. *Board, how many to compose.*

SEC. 4022. Each county must have a board of supervisors, consisting:

1. In counties of the first class, of seven members;
2. In counties of the second class, of five members;
3. In counties of the third class, of three members.

[Amador county was specially declared a county of the third class by act approved March 18, 1874; 1873-4, 443. Humboldt county was constituted a county of the second class by act approved March 18, 1876; 1875-6, 333.]

4023. *Qualifications.*

SEC. 4023. Each member of the board of supervisors must be an elector of the district he represents.

4024. *Term of office.*

SEC. 4024. The term of office of a supervisor is three years.

4025. *When number increased or decreased, what board must do.*

SEC. 4025. If, under the classification, the number of supervisors of any county is either increased or diminished, the board of supervisors must re-district the county into supervisor districts, as nearly equal in population as may be, to correspond with the number of supervisors to which it is, under the new classification, entitled. If the number is increased, at the first general election thereafter supervisors must be elected for such new districts in which no supervisors then acting reside; and if the number is decreased, no successors must be elected for supervisors whose terms expire until the number is decreased to that to which the county is entitled.

4026. *Vacancy in board, how filled.*

SEC. 4026. Whenever a vacancy occurs in the board of supervisors, from a failure to elect or otherwise, the county judge must fill the vacancy by appointing for the unexpired term some qualified elector of the district in which the vacancy occurs.

4027. *Members, how classified for election.*

SEC. 4027. The members of the board of supervisors must be by themselves so classified that a number as nearly equal as may be must be elected each year; the member longest in commission is the chairman of the board; and when two or more commissions expire at the same time, the board must elect a chairman

from those holding the oldest commissions. A supervisor appointed to fill a vacancy is not the holder of the oldest commission, under this section, unless all the supervisors are similarly situated.

4028. *Chairman, permanent and temporary.*

SEC. 4028. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties.

4029. *Clerk, who is, and his compensation.*

SEC. 4029. The clerk of the county is ex officio clerk of the board of supervisors. The records must be signed by the chairman and the clerk. The clerk must be paid such compensation as is provided by law, in full for all services as clerk of the board.

4030. *Duties of clerk.*

SEC. 4030. The clerk of the board must:

1. Record all the proceedings of the board;
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county;
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
4. Sign all orders made and warrants issued by order of the board for the payment of money, and when he is not also the county auditor, certify the same to that officer;
5. Record the reports of the county treasurer of the receipts and disbursements of the county;
6. Preserve and file all accounts acted upon by the board;
7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon;
8. Record all orders levying taxes; and,
9. Perform all other duties required by law or any rule or order of the board.

4031. *Books to be kept by the board.*

SEC. 4031. The board must cause to be kept:

1. A "minute book," in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings.
2. An "allowance book," in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering, and indexing the same through each year.
3. A "road book," containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads, road districts, and overseers thereof, their reports and accounts.
4. A "franchise book," containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required.
5. A "warrant book," to be kept by the county auditor, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

4032. *Regular meetings fixed.*

SEC. 4032. The regular meetings of the boards of supervisors must be held at their respective county seats on the first Mondays in May, August, Novem-

ber, and February of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and other purposes, as are prescribed in this code or provided for by the board.

4033. *Other regular meetings may be fixed.*

SEC. 4033. In the counties of the first and second classes additional regular meetings, not exceeding two in each year, may be provided for, fixed, and held for the transaction of business by an order duly entered of record, in which must be specified the character of business to be transacted at such additional regular meetings, and none other than that specified must be transacted. Notice of the order fixing such additional meetings must be published for four weeks, in a paper published in the county, before the ordinance is effective.

4034. *Special meetings, how called.*

SEC. 4034. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must, by the clerk, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

4035. *Meetings and records public.*

SEC. 4035. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge.

ARTICLE II.

GENERAL PERMANENT POWERS.

4046. *General permanent powers.*

SEC. 4046. The boards of supervisors, in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law:

To supervise official conduct of county officers.

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe keeping, management, or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

To district county.

2. To divide the counties into townships, school, road, and other districts required by law, change the same and create others, as convenience requires.

To create election precincts.

3. To establish, abolish, and change election precincts, and to appoint inspectors and judges of elections, canvass all election returns, declare the result, and issue certificates thereof.

Roads, bridges, etc.

4. To lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law.

Indigent sick.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer, and maintain hospitals there-

for, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding three dollars, and an ad valorem tax not exceeding one fifth of one per cent., or either of such levies, when both are not required, on all taxpayers and taxable property of the county.

To provide county farm.

6. To provide a farm in connection with the county hospital, and make regulations for working the same.

To provide rooms for county purposes.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes.

Acquire property for the county.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage, and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by them for that purpose, and no more than the appraised value must be paid therefor.

Provide county buildings.

9. To cause to be erected and furnished a court-house, jail, hospital, and such other public buildings as may be necessary.

May sell county property.

10. To sell at public auction at the court-house door, after thirty days' previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the use of the county.

Audit accounts of officers.

11. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

Allow accounts.

12. To examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.

Levy tax for current expenses.

13. To levy such tax annually on the taxable property of the county as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding one dollar on every one hundred dollars of value for any one year; and to levy such taxes as are required to be levied by special or local statutes.

Board of equalization.

14. To equalize the assessments.

To direct legal proceedings.

15. To direct and control the prosecution and defense of all suits to which the county is a party.

To insure property.

16. To insure the county buildings in the name of and for the benefit of the county.

To grant franchises.

17. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges, ferries, wharves, chutes, and piers.

Fix compensation of officers.

18. To fix the compensation of all county officers not otherwise in this code or by general or special law fixed, and provide for the payment of the same.

To fill vacancies.

19. To fill by appointment all vacancies that may occur in county or township offices, except those of county judge or supervisor.

To ordain health regulations.

20. To adapt to the county the provisions in this code, for the preservation of the health of San Francisco or Sacramento, for such limited time as they may deem proper, and to provide for the expenses thereof.

To contract for printing.

21. To contract for the county printing, and provide books and stationery for county officers.

To publish proceedings.

22. At the adjournment of each session of the board to cause to be published in a newspaper or otherwise a fair statement of all their proceedings, and semi-annually a statement of the financial condition of the county.

May ordain certain regulations.

23. To make regulations for the destruction of gophers, squirrels, other wild animals, and noxious weeds, and to levy a special tax of not exceeding three cents on each one hundred dollars of taxable property, wherewith to pay rewards therefor. To make regulations for the protection of game, fish, and shellfish, and for the prevention of injuries to sheep by dogs, and to tax dogs, and direct the application of the tax. When such regulations are made as provided in this section relating to game and fish, the laws of the state for the protection thereof are suspended in such county.

May ordain rules to govern board.

24. To make and enforce such rules and regulations for the government of their body, the preservation of order, and the transaction of business, as may be necessary.

May provide a seal.

25. To adopt a seal for their board, a description and impression whereof must be filed by their clerk in the offices of the county clerk and secretary of state.

May do all other acts required or necessary.

26. To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

4047. Powers of board of supervisors.

SEC. 4047. The board of supervisors shall have power to direct the sheriff to attend in person, or by deputy, all the meetings of the board, to preserve order, serve the notices or citations, as directed by the board. And the board shall have the same power to punish for contempt, by fine and imprisonment, as is now exercised and allowed by law to county courts, to require obedience to their citations, and decorum in their meetings. [*New section, approved March 18, 1874; Amendments 1873-4, 172; took effect from passage.*]

4047. Contracts, how made.

SEC. 4047. All contracts for:

1. County printing;
2. Books and stationery; and,
3. Supplies for county institutions; must be made with the lowest bidder;

and after ten days' public notice that such contract will be let, the bidding must be by sealed proposals. [*New section, approved March 30, 1874; Amendments 1873-4, 56; took effect July 6, 1874.*]

ARTICLE III.

OTHER POWERS AND RESTRICTIONS.

4064. *Provide appliances for holding elections.*

SEC. 4064. The board must provide all poll lists, poll books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

4065. *Certificates issued as board of canvassers.*

SEC. 4065. Whenever, as canvassers, the board of supervisors have declared the result of an election held in the county, certificates must be by their clerk issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to "Elections."

4066. *Appointments must be made on petition.*

SEC. 4066. No appointment to fill a vacancy in office must be made by the board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the township or district, if for a township or district office.

4067. *Power to require attendance of witnesses.*

SEC. 4067. The board may, by their chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction.

4068. *Examination of witnesses.*

SEC. 4068. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a court of justice. Disobedience to the subpoena, or to an order to attend, or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of, Chapter II, Title III, Part IV, of the Code of Civil Procedure. [See post, 11,985.]

4069. *Officers and witnesses not to be prepaid.*

SEC. 4069. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of supervisors are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow them reasonable compensation for services and attendance.

4070. *When board must not allow claims or contract debts.*

SEC. 4070. The board must not for any purpose contract debts or liabilities, except in pursuance of law or under ordinances of their own, adopted in accordance with the powers herein conferred; and whenever debts and liabilities have been created which, added to the salaries of county officers, and other estimated liabilities fixed by law for the remainder of the year, equal in the aggregate the revenue of the county for current expenses, no further allowance of any accounts must be made.

4071. *County not to present certain claims against county.*

SEC. 4071. No county officer shall, except for his own service, present any

claim, account, or demand, for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county. [*Amendment approved April 1, 1876; Amendments 1875-6, 65; took effect sixtieth day after passage.*^(a)]

4072. *Account, how made and prosecuted.*

SEC. 4072. The board of supervisors must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the board within a year after the last item of the account accrued.

4073. *Account must be filed prior to session.*

SEC. 4073. No account must be necessarily passed upon by the board unless made out as prescribed in the preceding section and filed by the clerk at least one day prior to the session at which it is asked to be heard.

4074. *What claims to be rejected—Proceedings on part allowance.*

SEC. 4074. When the board finds that any claim presented is not payable by the county, or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the board may allow the claim in part, and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment the claim may be again considered at the next regular succeeding session of the board, but not afterwards.

4075. *Claimant may sue, when, and when recover costs.*

SEC. 4075. A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the board, but not afterward; and if in such action judgment is recovered for more than the board allowed, on presentation of the judgment the board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the board allowed, the board must pay the claimant no more than was originally allowed.

4076. *What warrants must specify; how presented and paid.*

SEC. 4076. Warrants drawn by order of the supervisors on the county treasury for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

4077. *In what transactions supervisors not to be interested.*

SEC. 4077. No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

4078. *Transfer of application, in what cases made.*

SEC. 4078. Whenever an application is made to the board for an order, franchise or license, relating to any toll road, bridge, ferry, wharf, chute, pier or other subject over which the board has jurisdiction, in which a majority of the board are not disinterested, the application, by order of the board, must be

(a) The original section consisted of the last sentence alone.

transferred to the board of supervisors of an adjoining county; the clerk of the board must thereupon certify the application and all orders and papers relating thereto to the board to which the transfer is ordered; and thereafter the board to which the same is certified has full jurisdiction to hear and determine the application. In the cases mentioned in this code wherein the county judge may act for an interested supervisor, no transfer of the application need be made unless the judge is also interested.

4079. *Notices, how given.*

SEC. 4079. All public notices of proceedings of, or to be had before, the board, not otherwise specially provided for, must be posted at the court-house door, and in each election precinct in the county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 56; took effect July 6, 1874.*^(a)]

4080. *Provide for cultivating shade and ornamental trees.*

SEC. 4080. The board, under such regulations as they may adopt, must encourage the planting and preservation of shade and ornamental trees on the public roads and highways, and on and about the public grounds and buildings of the county, and pay to persons planting and cultivating the same, for every living tree thus planted, at the age of four years, the sum of one dollar.

4081. *Require assessors to report statistics.*

SEC. 4081. The board must require assessors to report to the surveyor-general annually a true statement of the agricultural and industrial pursuits and products of the county, with such other statistical information as they may by ordinance direct, and enforce obedience of the assessor thereto by deducting such proportion of his compensation as assessor as to them may seem appropriate, for a failure to comply with the order.

4082. *Claims in favor of supervisors.*

SEC. 4082. All claims against the county presented by members of the board of supervisors for per diem and mileage or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

4083. *Annual statement, when made and what to contain.*

SEC. 4083. The board must have prepared by the clerk, and when he is not also auditor then by that officer, and under their direction, prior to their annual August meeting, a statement showing:

1. The indebtedness of the county, funded and floating, stating the amount of each class and the rate of interest borne by such indebtedness or any part thereof;

2. A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury and its several funds.

4084. *Receive and apply donations of land, etc., to specific purposes.*

SEC. 4084. The board must receive from the United States or other sources, lands and other property granted or donated to the county for the purpose of aiding in the erection of county buildings, roads, bridges, or other specific purposes, and may use the same therefor, and may provide for the sale of the same and the application of the proceeds thereof.

4085. *Improve streams not navigable.*

SEC. 4085. The board may provide for widening, deepening, straightening, removing obstructions from, and otherwise improving, all streams within the

(a) The original section provided that the notices referred to "must be published in a newspaper published in the county; if there is no such newspaper, then

copies thereof must be posted at the court-house door, and at two other public places in the county."

county, for use as public highways for rafting and floating lumber, when such streams are not declared by law to be and are not in fact navigable for commercial purposes, and provide regulations for the use thereof; but no regulations of the board, nor improvements directed, must in any manner interfere with the private rights or privileges of riparian owners, miners or others.

4036. *What may be recovered on bond.*

SEC. 4086. Any supervisor who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently, or corruptly attempts to perform an act, as supervisor, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for every such act, to be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.

4087. *Chapter does not apply to San Francisco.*

SEC. 4087. This chapter does not apply to the city and county of San Francisco.

CHAPTER III.

COUNTY OFFICERS.

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ARTICLE I.

GENERAL PROVISIONS.

4101. *Age, citizenship, and residence, as to county officers.*

SEC. 4101. No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised.

4102. *Same, as to district and township officers.*

SEC. 4102. No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state, and an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

4103. *County officers enumerated.*

SEC. 4103. The officers of a county are:

- A county judge;
- A treasurer;
- A county clerk;
- An auditor;
- A sheriff;
- A tax collector;
- A district attorney;

- A recorder;
- An assessor;
- A surveyor;
- A school superintendent;
- A coroner;
- A public administrator;
- A board of supervisors; and
- In counties of the first class, for highway purposes,
- A commissioner of highways.

4104. *Township and other inferior officers.*

SEC. 4104. The officers of townships are two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of supervisors.

[For reference to special acts changing the above provision in certain counties, see under post, 4109.]

4105. *Offices united and consolidated.*

SEC. 4105. In all the counties of the third class:

1. The county clerk shall be ex officio auditor and recorder;
2. The sheriff shall be ex officio tax collector; and
3. The coroner shall be ex officio public administrator.

4106. *Consolidating offices by the board.*

SEC. 4106. By an ordinance adopted, recorded, and published at least three months prior to a general election at which county officers are to be elected, the boards of supervisors of counties of the second class may unite and consolidate certain offices by declaring that:

1. The recorder elected shall be ex officio auditor;
2. The county clerk elected shall be ex officio auditor and recorder;
3. The sheriff elected shall be ex officio tax collector; and,
4. The coroner elected shall be ex officio public administrator.

An Act to provide for public administrators in certain cases.

Approved March 30, 1872; 1871-2, 796.

Public administrators failing to qualify.

SECTION 1. If the public administrator of any county of this state fails to qualify, or in person fails to perform the duties of his office, the coroner of such county shall be ex officio public administrator; and in case both public administrator and coroner fail to qualify, or to perform the duties appertaining thereto, the supervisors shall appoint a suitable person to be public administrator; and all laws applicable to the qualification, powers, duties, and compensation of public administrator shall apply to the coroner or appointee of the supervisors as aforesaid.

SEC. 2. This act shall take effect and be in force from and after its passago.

[In reference to the officers mentioned in the foregoing two sections there are in force in some of the counties special acts, which may here be referred to, as follows:]

Mendocino county.

An Act to separate the office of county recorder from the office of county clerk in the county of Mendocino, approved January 8, 1872; 1871-2, 17.

Contra Costa county.

An Act to authorize the public administrator of Contra Costa county to act as coroner, approved February 28, 1872; 1871-2, 170.

Solano county.

An Act to better define the duties and fix the compensation of certain officers of Solano county, approved March 27, 1872; 1871-2, 624.

An Act making the county recorder of Solano county ex officio auditor of said county, and fixing his compensation, approved January 28, 1876; 1875-6, 14.
Tulare county.

An Act to separate the office of county recorder from the office of county clerk in the county of Tulare, approved February 4, 1874; 1873-4, 60.

Stanislaus county.

An Act to separate the office of county recorder from the office of county clerk, and to regulate the salaries of certain officers of the county of Stanislaus, approved March 4, 1874; 1873-4, 277; amended March 18, 1874; 1873-4, 448.

An Act concerning the offices of public administrator, coroner, and superintendent of public schools of the county of Stanislaus, approved March 23, 1874; 1873-4, 537.

Merced county.

An Act to separate the office of county recorder from the office of county clerk, and to regulate the salaries of certain officers of the county of Merced, approved March 26, 1874; 1873-4, 660.

San Joaquin county.

An Act making the county treasurer of San Joaquin county ex officio tax collector and the recorder ex officio county auditor, approved March 26, 1874; 1873-4, 692.

Placer county.

An Act consolidating the offices of sheriff and tax collector in the county of Placer and making the sheriff ex officio tax collector, approved March 27, 1874; 1873-4, 709.

Tehama county.

An Act making the treasurer of Tehama county ex officio tax collector and to provide for certain fees in office, approved March 30, 1874; 1873-4, 796; amended by act approved March 11, 1876; 1875-6, 232.

Santa Clara county.

An Act in relation to the county officers of Santa Clara county, their fees and salaries, approved February 10, 1876; 1875-6, 35.

[See also a previous act of the same title, approved March 25, 1876; 1875 6, 610.]

Tuolumne county.

An Act regulating the salaries of certain officers of Tuolumne county, approved February 10, 1876; 1875-6, 45.

Fresno, Tulare, and Kern counties.

An Act to separate the office of county auditor from the office of county recorder, and to regulate official salaries in the counties of Fresno, Tulare, and Kern, approved March 8, 1876; 1875-6, 151; amended by act approved March 20, 1876; 1875-6, 363.

Alameda county.

An Act to amend an act entitled An Act to fix the salaries of certain officers in the county of Alameda, and for other purposes, approved February 27, 1874, approved March 8, 1876; 1875-6, 166.

San Diego county.

An Act to provide for the government of the county of San Diego, approved March 30, 1876; 1875-6, 558.

Santa Cruz county.

An Act in relation to the county officers of Santa Cruz county, their fees and salaries, approved March 30, 1876; 1875-6, 576.

Lake county.

An Act concerning county officers of Lake county, and to regulate the fees and salaries thereof, approved March 31, 1876; 1875-6, 599.

San Luis Obispo county.

An Act fixing the salaries and compensation of certain officers of San Luis Obispo county, approved March 31, 1876; 1875-6, 608.

Butte county.

An Act to amend an act entitled An Act to fix the salaries and compensation of certain officers of Butte county, approved March 27, 1874, approved April 3, 1876; 1875-6, 906.

4107. *Omission to consolidate.*

SEC. 4107. When there is an omission by the board of supervisors to consolidate and to advertise the consolidation of offices as in the preceding section authorized, each office not so consolidated must be filled by an election.

4108. *Oath, bond, and fees of consolidated offices.*

SEC. 4108. When offices are united and consolidated either by the code or by order of the supervisors, the person elected to fill the offices so united and consolidated must take the oath and give the bond required for each, discharge all the duties pertaining to each, and receive the compensation affixed to the offices.

4109. *County officers, except, etc., when elected and term of office.*

SEC. 4109. All county and township officers, except judicial officers, assessors, and supervisors, must be elected at the general election held in September, eighteen hundred and seventy-three, and every two years thereafter, and hold office for two years from the first Monday of March next after their election; and the officers now holding shall continue in office until the first Monday in March, A. D. eighteen hundred and seventy-four, except assessors, as herein-after provided. Assessors must be elected at the general election held in September, eighteen hundred and seventy-five, and every four years thereafter, and hold office for four years from the first Monday of March next after their election, except that, in the city and county of San Francisco, the assessor holds his office for the term of four years from the first Monday of December next after his election. Every assessor now in office must hold his office, and exercise the duties thereof, until his successor is elected at the general election in September, eighteen hundred and seventy-five. The provision of this section, as far as it relates to the election and term of office of assessors, applies to every county and city in this state; provided, that the term of office of no city and county officer of the city and county of San Francisco shall be in anywise affected by reason of this act; and provided further, that nothing contained in this act shall operate to extend the term of office of the present assessor of El Dorado, Alameda, and San Joaquin counties. [*Amendment, approved December 22, 1873; Amendments 1873-4, 173; took effect from passage.*]^(a)

An Act to abolish the office of county assessor in the county of Alameda, and to create township assessors therein.

Approved February 10, 1874; 1873-4, 90.

Assessors in Alameda county.

SECTION 1. The term of office of the county assessor of Alameda county shall

(a) Original section:

SEC. 4109. All county and township officers, except judicial officers, assessors and supervisors, must be elected at the general election in September, 1873, and every two years thereafter, and hold office for two years from the first Monday of January next after their election. Assessors must be elected at the general election in 1875, and every four years thereafter, and hold their office for four years from the first Monday of January next after their election, except that in the

city and county of San Francisco the assessor holds his office for the term of four years from the first Monday of December next after his election. Every assessor now in office must hold his office and exercise the duties thereof until his successor is elected at the general election in 1875. The provision of this section, so far as it relates to the election and term of office of assessors, applies to every county, and city and county in this state.

expire on the first Monday of March, eighteen hundred and seventy-four, and each township in said county shall thereafter be an assessment district.

Township assessors.

SEC. 2. There shall be elected by the qualified electors of each township, at the general election in the year eighteen hundred and seventy-five, and at each general election thereafter, an assessor for and in each township in said county. Such assessors shall take their office on the first Monday of the month of March following the election.

Election and term of office.

SEC. 3. There shall be held a special election for township assessors, as provided for in this act, in said county, on the third Saturday of February, eighteen hundred and seventy-four, which election shall be subject to the general election law; provided, however, that only five days' notice of said special election shall be required, and that the copies of the great register used at the general election of eighteen hundred and seventy-three, shall be used in said special election. The assessors so elected shall take their office on the first Monday of March, eighteen hundred and seventy-four, and hold the same until the first Monday of March, eighteen hundred and seventy-six, and until their successors are elected and qualified.

Qualification.

SEC. 4. The township assessors shall give bonds and qualify as other township officers, and each bond shall be in such sum as the board of supervisors of the county shall fix.

Duties.

SEC. 5. The township assessors, in their several townships, shall discharge all the duties, and be subject to all the liabilities, which are or may hereafter be required of county assessors. They shall, in their respective townships, collect all poll taxes, for which they shall receive ten per cent. of the amount so collected; and, as assessors, they shall further receive six dollars each per day for each day actually employed in making the assessment, and for each day of attendance on the board of equalization, when their attendance is required by said board. For collecting personal property taxes, they shall receive the same compensation as is allowed by law to the tax collector for similar services. They shall have power to appoint a deputy, or deputies, the number of whom, and their compensation, shall be fixed by the board of supervisors; provided, such deputies shall not receive compensation to exceed five dollars per day for each day actually employed in making the assessment.

SEC. 6. All acts in conflict herewith are hereby repealed, and this act shall take effect immediately.

An Act regulating township offices in Tuolumne county [providing for but one justice of the peace and one constable in each township], approved March 18, 1874; 1873-4, 453.

An Act to provide for an additional justice of the peace and constable for the township and county of Los Angeles, approved December 22, 1875; 1875-6, 4.

An Act regulating certain township offices in the county of Calaveras [providing for one justice of the peace and one constable in each township after January 1, 1878], approved February 28, 1876; 1875-6, 78.

[The following special acts in reference to supervisors may be referred to as in force in the counties specified:]

San Diego county.

An Act to provide for the government of the county of San Diego, approved March 2, 1872; 1871-2, 191.

An Act to provide for the government of the county of San Diego, approved March 30, 1876; 1875-6, 558.

Del Norte county.

An Act to change the manner of electing supervisors in the county of Del Norte, and prescribing the method thereof, approved March 30, 1872; 1871-2, 756; amended January 2, 1874; 1873-4, 12.

Mendocino county.

An Act amendatory of an act relating to the boards of supervisors of the counties of Napa and Mendocino, approved April 4, 1864, as far as the same applies to or affects Mendocino county, approved January 23, 1874; 1873-4, 33.

San Bernardino county.

An Act to provide for the election of supervisors in the county of San Bernardino, approved February 17, 1874; 1873-4, 111.

An Act to fix the compensation of the supervisors of San Bernardino county, approved March 27, 1876; 1875-6, 488.

Tuolumne county.

An Act to prescribe the commencement of the term of supervisors in the county of Tuolumne, approved February 24, 1874; 1873-4, 154.

Napa county.

An Act to reorganize the board of supervisors of Napa county and for other purposes, approved February 25, 1874; 1873-4, 158; amended March 10, 1874; 1873-4, 329.

Placer county.

An Act reorganizing the board of supervisors in the county of Placer, and providing for the election of the same, approved March 13, 1874; 1873-4, 347; amended March 28, 1874; 1873-4, 775; amended March 30, 1876; 1875-6, 573.

Amador county.

An Act in relation to the board of supervisors of Amador county, approved March 18, 1874; 1873-4, 443; affected by an act to regulate salaries, etc., approved March 20, 1876; 1875-6, 370.

San Joaquin county.

An Act relating to the supervisors of San Joaquin county; approved March 18, 1874; 1873-4, 466.

San Mateo county.

An Act to prescribe the duties and provide the salary of certain offices of San Mateo county, to authorize the issue of bonds for road purposes, and other matters relating thereto, approved March 18, 1874; 1873-4, 479; amended March 28, 1874; 1873-4, 779.

Santa Clara county.

An Act in relation to the county officers of Santa Clara county, their fees, and salaries, approved February 9, 1876; 1875-6, 35.

Tehama county.

An Act to redistrict the county of Tehama, and to reorganize the board of supervisors in and for said county, approved March 30, 1874; 1873-4, 816.

El Dorado county.

An Act to organize the board of supervisors and define their duties in the county of El Dorado, approved March 30, 1874; 1873-4, 872.

An Act to create a board of auditors for El Dorado county, and fix the powers thereof, approved March 30, 1874; 1873-4, 825; amended April 1, 1876; 1875-6, 681.

Monterey county.

An Act fixing the terms of the members of the board of supervisors of Monterey county, and for other purposes, approved March 3, 1876; 1875-6, 124.

Calaveras county.

An Act concerning the offices of supervisor and district attorney in the county of Calaveras, approved March 7, 1876; 1875-6, 141.

Humboldt county.

An Act fixing the number of supervisors of Humboldt county, approved March 18, 1876; 1875-6, 333.

San Luis Obispo county.

An Act to reorganize the board of supervisors of San Luis Obispo county, and to provide for the election of the same, approved March 27, 1876; 1875-6, 493.

Santa Cruz county.

An Act in relation to the county officers of Santa Cruz county, their fees and salaries, approved March 30, 1876; 1875-6, 576.

Lake county.

An Act concerning county officers of Lake county, and to regulate the fees and salaries thereof, approved March 31, 1876; 1875-6, 599.

Sonoma county.

An Act to amend an act entitled An Act to regulate the salaries and fix the compensation of certain county officers in the county of Sonoma, approved April 1, 1876; 1875-6, 726.

The act amended was approved March 16, 1874; 1873-4, 382.

Butte county.

An Act to amend an act entitled An Act to fix the salaries and compensation of certain officers of Butte county, approved March 27, 1874; approved April 3, 1876; 1875-6, 906.

4110. *County judges and justices election, and term of office.*

SEC. 4110. The election and terms of office of county judges and justices of the peace are provided for in Title I of the Code of Civil Procedure. [See post, 10,083 and 10,113.]

4111. *Supervisors, when elected.*

SEC. 4111. In counties of the third class one supervisor is elected each year at the general election when it occurs, and on the corresponding day of the alternate year when no general election occurs; in the counties of the first and second classes a number of supervisors as nearly equal as may be, to be determined by the board, are elected every year at the same times as specified herein for counties of the third class.

4112. *May appoint deputies.*

SEC. 4112. Every county and township officer, except county judge, supervisor, and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office.

4113. *Same.*

SEC. 4113. The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships, must be made in writing, and filed in the office of the county clerk.

4114. *Official name of principal officer includes deputies.*

SEC. 4114. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

4115. *Vacancies, how filled.*

SEC. 4115. A vacancy in the office of county judge is filled by an appointee

of the governor. All other vacancies in county and township offices are filled by appointments made by the board of supervisors. Appointees hold until the vacancies are filled by election.

4116. *What offices to be kept at county seat.*

SEC. 4116. Sheriffs, clerks, recorders, treasurers, tax collectors, district attorneys, and auditors, must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock A. M. till five o'clock P. M., every day in the year, except holidays. The county judge must have chambers at the county seat, and must establish such rules and hours for official business as may be necessary for the dispatch thereof. He must attend at his chambers at least one day in each week.

4117. *Civil penalty for non-performance of duty attached to official bond.*

SEC. 4117. Whenever, except in criminal prosecutions, any special penalty, forfeiture, or liability is imposed on any officer for non-performance, or mal-performance of official duty, the liability therefor attaches to the official bond of such officer, and to the principal and sureties thereon.

4118. *County officers may administer oaths.*

SEC. 4118. Every officer mentioned in section 4103, and every justice of the peace, may administer and certify oaths.

4119. *Certain officers must reside at county seat.*

SEC. 4119. The following officers must reside at the county seat of their respective counties: the county judge, the treasurer, the county clerk, the auditor, the sheriff, the tax collector, the district attorney, the recorder.

4120. *Absence of county officer from state.*

SEC. 4120: A county officer shall in no case absent himself from the state for a period of more than sixty days, and for no period without the consent of the board of supervisors of his county. [*Amendment, approved February 10, 1876; Amendments 1875-6, 65; took effect from passage.*^(a)]

4121. *Certain officers prohibited from practicing law.*

SEC. 4121. Sheriffs, clerks, and constables and their deputies are prohibited from practicing law or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such.

4122. *Official bond classified and amounts therefor.*

SEC. 4122. County officers must execute official bonds corresponding to the class of the county of which they are officers, in the following amounts:

1. Sheriffs, first class, sixty thousand dollars; second class, twenty-five thousand dollars; third class, ten thousand dollars.
2. Clerks, first class, twenty-five thousand dollars; second class, fifteen thousand dollars; third class, six thousand dollars.
3. Auditors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.
4. Treasurers, first class, one hundred thousand dollars; second class, eighty thousand dollars; third class, sixty thousand dollars.
5. Recorders, first class, ten thousand dollars; second class, five thousand dollars; third class, two thousand dollars.
6. District attorneys, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars.
7. Assessors, first class, twenty thousand dollars; second class, ten thousand dollars; third class, three thousand dollars.

(a) Original section:

SEC. 4120. No county officer may absent himself from the state for more than thirty days, unless with the consent of the legislature.

It was previously amended by act of March 3, 1874; Amendments 1873-4, 174, so as to read like the original down to and including the words "thirty days."

8. Tax collectors, first class, fifty thousand dollars; second class, thirty thousand dollars; third class, fifteen thousand dollars.

9. Surveyors, first class, ten thousand dollars; second class, five thousand dollars; third class, one thousand dollars.

10. School superintendents, first class, five thousand dollars; second class, three thousand dollars; third class, one thousand dollars.

11. Coroners, first class, five thousand dollars; second class, two thousand dollars; third class, one thousand dollars.

12. Public administrators, first class, thirty thousand dollars; second class, twenty thousand dollars; third class, ten thousand dollars.

13. Supervisors, first class, fifteen thousand dollars; second class, ten thousand dollars; third class, two thousand dollars. [*Amendment, approved March 30, 1874; Amendments 1873-4, 56; took effect July 6, 1874.*^(a)]

An Act concerning certain officers in the county of Merced.

Approved January 16, 1872; 1871-2, 21.

[This act fixes the bonds of the public administrator and coroner of the county of Merced at five thousand dollars each, provided the board of supervisors might order special bonds in addition thereto, if in their judgment such additional bonds become necessary.]

An Act to fix the bonds of the sheriff of the county of Contra Costa.

Approved February 26, 1872; 1871-2, 158.

[This act fixes the bond of the sheriff of Contra Costa county at twenty thousand dollars.]

An Act concerning official bond of public administrator of Contra Costa county.

Approved March 1, 1872; 1871-2, 163.

[This act fixes the bond of the public administrator of Contra Costa county at five thousand dollars, provided the board of supervisors may order a special bond in addition thereto, if in their judgment such additional bond becomes necessary.]

[The official bonds of officers in El Dorado county were fixed by the fee bill of March 27, 1872; 1871-2, 594.]

An Act to fix the bonds of the tax collectors of Fresno, Tulare, and Kern counties.

Approved January 28, 1876; 1875-6, 16.

[This act provides that the boards of supervisors of the counties named in the title shall fix the amount of the bonds of the tax collectors in the counties named, provided that no one of said bonds shall be fixed in a sum less than fifty thousand dollars or greater than one hundred thousand dollars.]

An Act fixing the bonds of the county treasurers of the counties of Mariposa, Tuolumne, and Calaveras.

Approved January 28, 1876; 1875-6, 17.

[This act exempts the counties named from the provisions of section 4122 of the Political Code, as amended March 30, 1874, so far as relates to the county treasurers, and fixes their bonds at twenty-five thousand dollars.]

An Act in relation to the offices of coroner and public administrator of the county of Santa Cruz.

Approved March 3, 1876; 1875-6, 121.

[This act was to legalize the official bond and oath of the coroner and public administrator of the county named, elected at the general election of 1875.]

(a) The original section in the fourth subdivision instead of "eighty" had "fifty," and instead of "sixty" it had "twenty."

An Act to fix the penal sum of the official bond of the treasurer of the county of Alpine.

Approved March 6, 1876; 1875-6, 140.

[This act fixed the amount of the bond referred to at fifteen thousand dollars.]

An Act to fix the amount of the bonds of the county treasurer of Modoc and Lassen counties.

Approved March 8, 1875; 1875-6, 154.

[This act fixed the amount of the bond of the treasurer of Modoc at thirty thousand dollars, and that of the treasurer of Lassen at forty thousand dollars.]

An Act to fix the salary and bond of the assessors of the counties of Tulare and Kern.

Approved March 9, 1876; 1875-6, 172.

[This act provided that the bonds referred to should be fixed from time to time "by the board of supervisors of said counties, in such sum as they shall deem necessary," but "said bond" is not to be fixed at a less sum than four thousand dollars.]

An Act to provide for the government of the county of San Diego.

Approved March 30, 1876; 1875-6, 558.

[This act provided that the board of supervisors should fix the amount of the bonds of all county, district, and township officers.]

4123. *When amount of bond is not fixed by law.*

SEC. 4123. When the amount of the bond to be given by any county or township officer is not fixed by law, the amount must be fixed by the board of supervisors.

4124. *Other provisions relating to county officers.*

SEC. 4124. Other provisions relating to the different classes of officers are contained in Chapter VII, Title I of Part III of this Code. [See ante, 841.]

ARTICLE II.

COUNTY JUDGE.

4134. *Duty of county judge.*

SEC. 4134. The county judge must:

1. Perform the duties of a magistrate;
2. Hold county and probate courts;
3. Take and certify acknowledgments to the execution of instruments in writing, and grant certificates to the official character of the county clerk;
4. Certify to the ownership of wrecked property or its proceeds; and
5. Perform such other duties as are prescribed in any of the laws of this state.

ARTICLE III.

COUNTY TREASURER.

4144. *Duty of county treasurer.*

SEC. 4144. The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;
2. File and keep the certificates of the auditor delivered to him when moneys are paid into the treasury;
3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him;

the amount, time when, to whom, and on what account all disbursements were made by him;

4. So keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county auditor;

6. Disburse the county moneys only on county warrants issued by the county auditor, based on orders of the board of supervisors, or as otherwise provided by law.

4145. *To receive no money, except on certificate of auditor.*

SEC. 4145. He must receive no money into the treasury unless accompanied by the certificate of the auditor provided for in section 4217.

4146. *Must receipt for money.*

SEC. 4146. When any money is paid to the county treasurer he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county auditor, who must charge the treasurer therewith and give the person paying the same a receipt.

4147. *Mode of redeeming warrants.*

SEC. 4147. When a warrant is presented for payment, if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

4148. *Registry of warrants, when no funds.*

SEC. 4148. When any warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant bears seven per cent. per annum interest.

4149. *Notice of redemption of warrants.*

SEC. 4149. When there are sufficient moneys in the treasury to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the court-house door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice such warrants cease to draw interest.

4150. *What it must state, and how published.*

SEC. 4150. In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants presented for payment prior to such a date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

4151. *Priority in payment of warrants.*

SEC. 4151. Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer, and upon the receipt of moneys into the treasury not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

4152. Funds reserved sixty days therefor.

SEC. 4152. Should such warrants not be re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of supervisors may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

4153. Must note the interest paid on warrant.

SEC. 4153. When the treasurer pays any warrant on which any interest is due he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.

4154. Settlements, when and how made—monthly and annually.

SEC. 4154. The treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue, of whatsoever nature and kind, with the auditor, on the first Monday of each month. For the purpose of making such settlement he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the auditor's receipt therefor. He must also make a full settlement of all accounts with the auditor annually on the first Monday of January, in the presence of the supervisors, who have a supervisory control thereof.

4155. Report to board of supervisors each session.

SEC. 4155. Each county treasurer must make a detailed report, at every regular meeting of the board of supervisors of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, may clearly and distinctly appear.

4156. Penalty for not reporting.

SEC. 4156. If any county treasurer neglects or refuses to settle or report, as required in sections 4154, 4155, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of supervisors must institute suits for the recovery thereof.

4157. When he must sue district attorney.

SEC. 4157. If the district attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of section 4256, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent. thereon by way of damages.

4158. When he must sue coroner.

SEC. 4158. If the coroner, or any justice of the peace acting as coroner, fails to deliver to the treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the public administrator or other legal representative of the decedent, as required by section 4287, the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

4159. What he must do with property received from coroner.

SEC. 4159. The treasurer, upon receiving from the coroner or justice acting

as coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner, he must within thirty days sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

4160. *Money from coroner in treasury may be demanded within six years.*

SEC. 4160. If the money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of supervisors.

4161. *Treasurer must not loan public money or make general deposit.*

SEC. 4161. The county treasurer must keep all moneys belonging to this state or to any county of this state in his own possession until disbursed according to law. He must not place the same in the possession of any person, to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the safe keeping of the public moneys.

4162. *Supervisors may suspend treasurer.*

SEC. 4162. Whenever an action based upon official misconduct is commenced against any county treasurer, the supervisors may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

4163. *No commissions allowed.*

SEC. 4163. In case of the death of any county treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessor.

4164. *Books and vouchers subject to inspection.*

SEC. 4164. The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of supervisors and grand jury.

4165. *Treasurer must permit auditor to examine his books, etc.*

SEC. 4165. The treasurer must permit the county judge and auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting.

ARTICLE IV.

SHERIFF.

4175. *"Process" and "notice" defined.*

SEC. 4175. "Process," as used in this article, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer, or when required by law to be served independently of such proceeding.

4176. *Duties of sheriff.*

SEC. 4176. The sheriff must:

1. Preserve the peace;
2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or who have committed a public offense;
3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

4. Attend all courts, except justices', probate, and police courts, at their respective terms, held within his county, and obey their lawful orders and directions;

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

6. Take charge of and keep the county jail and the prisoners therein;

7. Indorse upon all process and notices the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

8. Serve all process and notices in the manner prescribed by law;

9. Certify under his hand upon process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

4177. *Service and execution of process.*

SEC. 4177. When process or notices are returnable to another county, he may inclose such process or notice in an envelope, addressed to the officer from whom the same emanated, and deposit it in the post-office, prepaying postage.

4178. *Return prima facie evidence.*

SEC. 4178. The return of the sheriff upon process or notices is prima facie evidence of the facts in such return stated. [*Amendment, approved March 30, 1874; Amendments 1873-4, 57; took effect July 6, 1874.*]^(a)

4179. *Penalty for non-return of process, etc.*

SEC. 4179. If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

4180. *Liable for refusing to levy.*

SEC. 4180. If the sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property.

4181. *Damages for refusing to pay over money.*

SEC. 4181. If he neglects or refuses to pay over on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

4182. *Liable for permitting an escape.*

SEC. 4182. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation.

(a) The original section used the word "primary" instead of "prima facie."

4183. *Liable for a rescue.*

SEC. 4183. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

4184. *No action for escape or rescue after recapture.*

SEC. 4184. An action cannot be maintained against the sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff.

4185. *Direction to sheriff must be in writing.*

SEC. 4185. No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney.

4186. *When office of sheriff deemed vacant.*

SEC. 4186. When the sheriff is committed under an execution or commitment, for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

4187. *When sheriff justified in executing process.*

SEC. 4187. A sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

4188. *Officer to exhibit process.*

SEC. 4188. The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

4189. *Sheriff to act as crier.*

SEC. 4189. The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses, and all other persons bound to appear at the court, and make proclamation at the opening and adjournment of the court, and of any other matter under its direction.

4190. *Service on sheriff, how made.*

SEC. 4190. Service of a paper, other than process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

4191. *Coroner to execute process when sheriff a party.*

SEC. 4191. When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

4192. *Elisors to act in cases designated.*

SEC. 4192. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the court, the judge thereof, or a county judge, and denominated an elisor, in the following cases:

1. When the sheriff and coroner are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or to the judge thereof, that both of these

officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process.

An Act prescribing the fees of coroners and elisors and their mode of payment.

Approved March 30, 1874; 1873-4, 794.

Fees of coroner or elisor.

SECTION 1. Whenever process is executed, or any act performed by a coroner or elisor in the cases provided by law in that behalf, such coroner or elisor shall be entitled to receive the same fees as the sheriff would be entitled to receive for the same service, to be paid by the plaintiff in case of the summoning of jurors to complete the panel, and by the person or party requiring the service in all other cases in private actions. If rendered at the instance of the people, it shall be audited and paid as a county charge.

SEC. 2. This act shall take effect immediately from and after its passage.

An Act to authorize the boards of supervisors to furnish the sheriff and deputy sheriffs of their several counties with a suitable badge of office.

Approved April 1, 1876; 1875-6, 803.

Sheriff's badges.

SECTION 1. The boards of supervisors of the several counties of this state must furnish to the sheriff, under sheriffs, and deputy sheriffs of their respective counties a suitable badge of office, upon which shall be inscribed the words "sheriff" and deputy sheriff.

SEC. 2. This act shall take effect from and after its passage.

4193. *Other duties.*

SEC. 4193. The sheriff must perform such other duties as are required of him by law.

ARTICLE V.

COUNTY CLERK.

4204. *Duties of county clerk.*

SEC. 4204. The county clerk must:

1. Take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited in his office.

2. Act as clerk of the board of supervisors, and as clerk of the district, county, and probate courts, and attend each term thereof, and upon the judges at chambers when required.

3. Issue all process and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a docket, in which must be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding therein, with the date thereof, and a list of all the fees charged.

4. Keep for the district and county courts, in separate volumes, an index of all suits, labeled "General index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Plaintiffs," "Defendants," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment-book," "Page of minute-book of district court;" also an index labeled "General index—Defendants," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of suit," "Defendants," "Plaintiffs," "Date of judgment," "Number of judgment," "Page of entry of judgment in judgment-book," "Page in order-book of district court."

4205. Other duties.

SEC. 4205. He must keep such other records and perform such other duties as are prescribed by law.

An Act to provide for indexing the names of persons who have declared their intention to become or who have become citizens of the United States, in the several courts of record in this state.

Approved February 8, 1872; 1871-2, 80.

Duty of clerks of courts of record.

SECTION 1. It shall be the duty of the clerks of the several courts of record in this state to provide two books, in the one of which shall be entered in alphabetical order, the names of all persons who, from the organization of said courts, have declared or who may hereafter declare their intention to become citizens of the United States, together with the date of such declaration; and in the other of which shall be entered in alphabetical order, the names of all persons who have been or who may be hereafter admitted citizens of the United States by any courts of which they are clerks, and they shall also enter in separate columns opposite each name, the country of which he was before a citizen or subject, the date of his admission, and the page of the book of the record of the court containing the order admitting him as such citizen.

Clerks' fees.

SEC. 2. The said clerks shall be entitled to receive for their own use and benefit, a fee of twenty cents for each name indexed as provided in section one of this act, and said fees, together with the costs of said books, shall become a county charge, and shall be allowed by the board of supervisors of the several counties, and paid out of the same fund that other services rendered by said clerks to their respective counties are paid; provided, that no compensation shall be allowed any clerk under the provisions of this act for indexing any names contained in any such records which have been heretofore indexed, but such records and indices shall stand in lieu of those provided for in this act; and provided further, that no clerk shall be entitled to charge or receive any fee for indexing the name of any person who may declare his intention to become or who may become a citizen of the United States after the passage of this act.

SEC. 3. This act shall take effect immediately.

ARTICLE VI.

AUDITOR.

4215. Auditor to draw warrants and settle accounts.

SEC. 4215. The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of supervisors; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal.

4216. Warrants must specify what.

SEC. 4216. All warrants must distinctly specify the liability for which they are drawn, and when it accrued.

4217. Settlements with debtors to the county.

SEC. 4217. The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor give to such person a discharge, and charge the treasurer with the amount received by him.

4218. *To keep accounts, file receipts, etc.*

SEC. 4218. The auditor must keep accounts current with the treasurer, and when any person deposits with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor must file such receipt and charge the treasurer with the amount thereof.

4219. *Warrants of auditor to be numbered.*

SEC. 4219. All warrants issued by the auditor during each year, commencing with the first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

4220. *Auditor to examine books of treasurer, when.*

SEC. 4220. The auditor must, between the first and tenth of each month, examine the books of the treasurer and see that the same have been correctly kept.

4221. *Auditor and county judge to count money in treasury and make statement.*

SEC. 4221. The county judge and auditor must, at least once in each month, count the money in the county treasury, and make and verify in duplicate statement showing:

1. The amount of money that ought to be in the treasury;
2. The amount and kind of money actually therein.

4222. *Statements to be filed and posted.*

SEC. 4222. They must file one of the statements in the office of the county clerk, and the auditor must post and maintain the other in his office for at least a month thereafter.

4223. *Quarterly statements concerning collection of revenue to be made, when.*

SEC. 4223. The auditor and treasurer of each county must, on the first Monday in February, May, August and November, make a joint statement to the board of supervisors, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; the total amount of warrants drawn and unpaid, and accounts or claims audited, or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county.

4224. *Other duties.*

SEC. 4224. The auditor must discharge such other duties as are required by law.

ARTICLE VII.

RECORDER.

4224. *Recorder to procure record books.*

SEC. 4234. The recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of supervisors. He has the custody of and must keep all books, records, maps, and papers deposited in his office.

4235. *What to be recorded.*

SEC. 4235. He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books, in a fair hand:

1. Deeds, grants, transfers, and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved;

2. Mortgages of personal property;
3. Certificates of marriage and marriage contracts;
4. Wills admitted to probate;
5. Official bonds;
6. Notices of mechanics' liens;
7. Transcripts of judgments which by law are made liens upon real estate;
8. Notices of attachments upon real estate;
9. Notices of the pendency of an action affecting real estate, the title thereto, or possession thereof;
10. Instruments describing or relating to the separate property of married women;
11. Notices of pre-emption claims;
12. Births and deaths; and,
13. Such other writings as are required or permitted by law to be recorded.

4236. *Indexes to be kept by recorder.*

SEC. 4236. Every recorder must keep:

1. An index of deeds, grants, and transfers, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, or transfers," and "Where recorded."

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, or transfers," and "Where recorded."

3. Two indexes of mortgages, labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," "When discharged."

4. Two indexes of mortgagees, labeled respectively: "Mortgagees of real property," "Mortgagees of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," "When discharged."

5. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagors," "Releases of mortgages of personal property—mortgagors," with the pages thereof divided into six columns, headed respectively: "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," "Where mortgages released are recorded."

6. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagees," "Releases of mortgages of personal property—mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

7. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns, headed respectively: "Names of parties executing the powers," "To whom powers are executed," "Date of powers," "Date of recording," "Where powers are recorded."

8. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded."

9. An index of leases, labeled "Lessees," each page divided into four columns, headed respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded."

10. An index of marriage certificates, labeled "Marriage certificates—men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

11. An index of marriage certificates, labeled "Marriage certificates—women," each page divided into six columns, headed respectively: "Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded."

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignments," "When and where recorded."

13. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments assigned," "Date of assignments," "When and where recorded."

14. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded."

15. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded."

16. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices when and where recorded."

17. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied."

18. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," "When attachments discharged."

19. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively: "Parties to the actions," "Notices when recorded," "Where recorded."

20. An index of the separate property of married women, labeled "Separate property of married women," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded."

21. An index of pre-emption claims, labeled "Pre-emption claims," each page divided into five columns, headed respectively: "Claimants," "Notices," "When received," "Date of notices," "When and where recorded."

22. An index to the register of births and deaths.

4237. *Records of certificates of sale.*

SEC. 4237. The recorder must keep in his office a book to be called "Certificates of sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which in separate columns he must enter the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale.

4238. *To record decrees of partition.*

SEC. 4238. The recorder must file and record with the record of deeds, grants, and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is recorder.

4239. *Filing of copy to impart notice.*

SEC. 4239. Every such certified copy of partition, from the time of the filing the same with the recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and lienholders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant, or transfer.

4240. *May keep two or more indexes in same volume.*

SEC. 4240. The recorder may keep in the same volume any two or more of the indexes mentioned in section 4236, but the several indexes must be kept distinct from each other, and the volume distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index, and when an instrument is recorded to which an executor, administrator or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

4241. *Recorder's duty on receipt of instrument to be recorded.*

SEC. 4241. When any instrument, paper or notice, authorized by law to be recorded, is deposited in the recorder's office for record, the recorder must indorse upon the same the time when it was received, noting the year, month, day, hour, and minute of its reception, and must record the same without delay, together with the acknowledgments, proofs, and certificates, written upon or annexed to the same, with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

4242. *Recorded instruments to be indorsed.*

SEC. 4242. He must also indorse upon each instrument, paper or notice, the time when and the book and pages in which it is recorded, and must thereafter deliver it upon request to the party leaving the same for record, or to his order.

4243. *Recorder to make searches.*

SEC. 4243. The recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

4244. *Liable for neglect of certain duties.*

SEC. 4244. If any recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice, within a reasonable time after receiving the same; or,

2. Records any instrument, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,

3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or,

4. Neglects or refuses to make the searches and to give the certificate required by this article; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or,

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein;

—He is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby.

4245. *Fees to be prepaid.*

SEC. 4245. He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered.

4246. *Records to be open for inspection.*

SEC. 4246. All books of record, maps, charts, surveys, and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

ARTICLE VIII.

DISTRICT ATTORNEY.

4256. *Duties of district attorney.*

SEC. 4256. The district attorney is the public prosecutor, and must:

1. Attend the district and county courts, and conduct, on behalf of the people, all prosecutions for public offenses;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the district or county courts, must attend upon the magistrates in cases of arrest, when required by them, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

3. Draw all indictments, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county;

4. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county treasurer;

5. On the first Mondays of January, April, July, and October in each year, file with the auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the county treasurer;

6. Give when required, and without fee, his opinion (in writing) to county, district, and township officers on matters relating to the duties of their respective offices; and,

7. Keep a register of official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein;

8. Perform such other duties as are prescribed by law.

4257. *Legal adviser of supervisors.*

SEC. 4257. The district attorney is the legal adviser of the board of supervisors. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

4258. *Must not act as attorney for claims against his own county.*

SEC. 4258. The district attorney, except for his own services, must not present any claim, account, or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

ARTICLE IX.

SURVEYOR.

4268. *County surveyor to make surveys on application made to him.*

SEC. 4268. The surveyor must make any survey that may be required by the order of court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law.

4269. *Surveys of lands in two counties.*

SEC. 4269. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and on such application being made the surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

4270. *Disputes before court concerning title to lands in two counties.*

SEC. 4270. When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

4271. *Courses to be run by true meridian.*

SEC. 4271. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

4272. *Surveyor to employ assistants, when.*

SEC. 4272. If a party for whom a survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers, and receive the reasonable hire of all assistance necessarily employed.

4273. *Surveyor to transmit plat and field notes to surveyor-general when required.*

SEC. 4273. Each county surveyor, immediately after making any survey, except surveys of city or town lots, must make out a copy of the field notes and plat, and transmit the same to the surveyor-general, indicating plainly upon the plat at what point of any line any river or stream or county line is touched or crossed. He must communicate to the surveyor-general such information concerning surveys made by him, and other matters connected with the duties of his office, as may be required.

4274. *To assist surveyor-general, when.*

SEC. 4274. Each county surveyor must, when required, aid and assist the surveyor-general in making surveys within the county.

4275. *When county surveyor is interested in lands, court to appoint some other person.*

SEC. 4275. When the county surveyor is interested in any land the title to

which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person, and the person so appointed is for that purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

ARTICLE X.

CORONER.

4285. *Coroner to hold inquest.*

SEC. 4285. The coroner must hold inquests as prescribed in Chapter II, Title XII, Part II of the Penal Code. [See post, 14,510.]

4286. *Coroner to bury body, when.*

SEC. 4286. When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county.

4287. *To deliver to county treasurer property, etc., found on body.*

SEC. 4287. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased any money or other property found upon the body.

4288. *Auditing accounts of coroner.*

SEC. 4288. Before auditing or allowing the accounts of the coroner, the supervisors must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;
2. The disposition made of such property.

4289. *Justice of peace to act as coroner in certain cases.*

SEC. 4289. If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

4290. *Coroner to discharge duties of sheriff, when.*

SEC. 4290. In the cases specified in Article IV of this chapter, the coroner must discharge the duties of sheriff.

An Act concerning the attendance of physicians and surgeons in certain cases, and to provide payment for making chemical and post-mortem examinations.

Approved February 8, 1872; 1871-2, 81.

Coroner may summon physician, surgeon or chemist.

SECTION 1. The coroner or other officer holding an inquest upon the body of a deceased person may summon a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach, or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death.

Compensation.

SEC. 2. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases de lunatico inquirendo, as above provided, shall be allowed a reasonable compensation for such attendance or examination by the board of supervisors, upon the written certificate of the court or officer requiring such

services, as to the extent and supposed value of the same; provided, that such certificate shall not be conclusive as to the amount of compensation.

An Act in relation to coroners in the city and county of San Francisco.

Approved March 16, 1872; 1871-2, 403.

Official oath and bond.

SECTION 1. Every person elected or appointed to the office of coroner, before he shall enter upon the duties of such office, shall take the constitutional oath of office, and give an official bond in the sum of five hundred dollars.

Coroner's duties.

SEC. 2. The duties of coroner shall be, first, to hold inquests upon the bodies of persons slain, or who shall have committed suicide, or been found dead under such circumstances as to lead to a suspicion of crime committed, within the county in which such coroner resides; second, to issue process for the arrest of one charged upon inquest with murder or manslaughter; to hold inquest on the body of every prisoner who dies in jail; and it shall be the duty of the jailer, whenever a prisoner dies in his custody, to send for the coroner who has jurisdiction, who shall hold inquest upon the body of such prisoner. The duties of coroners upon inquests shall not be delegated.

Notice of death.

SEC. 3. Whenever any coroner shall receive notice that any person has been slain, or has committed suicide, or has died suddenly, or has been found dead under circumstances such as to require an inquisition, it shall be his duty to go to the place where such person shall be, or if the body shall have been interred, shall cause it to be disinterred, and shall forthwith summon not less than nine or more than fifteen persons to serve as jurors, to appear before him forthwith at such place as he shall appoint, and make inquisition concerning such death. He shall summon none but persons duly qualified by law to serve as jurors, and no such person shall be exempt except at the discretion of the coroner. No person shall be summoned who is related to the deceased, or to any person who may be suspected or charged with the killing; nor shall any one be summoned who is known to be prejudiced for or against him, but the jurors who are selected and appear shall not be challenged by any party. [*Amendment, approved March 23, 1876; 1875-6, 397; took effect from passage.*]

Forfeiture.

SEC. 4. Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit a sum not exceeding the sum of two hundred dollars, to be recovered by the coroner, in the name of the people of the state, before any justice of the peace in the proper township, and when collected to be paid into the county treasury for the use of the county.

Swearing jury.

SEC. 5. When six or more of the jurors attend they shall be sworn by the coroner and charged by him to inquire how and in what manner and when and where such person came to his death, and who such person was, and into all the circumstances attending such death, and to make a true inquisition according to the evidence offered to them or arising from the inspection of the body.

Inquest.

SEC. 6. There shall be but one inquest upon a body, unless that taken be set aside by the court; and there shall be but one inquest held upon several bodies of persons who were killed by the same cause and who died at the same time. Whenever it shall appear that an error in the identity of the body has been made by the jury, it shall be discretionary with the coroner to call another inquest upon the body without reference to the court, and a memorandum of the error shall be entered upon the erroneous inquisition.

To view the body.

SEC. 7. After the jury have been sworn and charged by the coroner, they shall go together with the coroner to view and examine the body of the deceased person. They shall not proceed upon the inquest until they have so viewed the body. After the jury have viewed the body they may retire to any convenient place to hear the testimony of witnesses and deliberate upon their verdict. For this end the coroner may adjourn the inquest from time to time, as may be necessary.

Issue subpoena.

SEC. 8. The coroner may issue subpoenas for witnesses, returnable forthwith or at such time and place as he may appoint therein, which may be served by any competent person by reading the same to the witness or informing him or her of the contents thereof, and such witness shall not be entitled to any fee for attendance. Every person served with such subpoena shall be liable to the same penalties for disobedience thereto, and his attendance may be enforced in like manner as in case of subpoenas issued by a justice of the peace.

Witnesses.

SEC. 9. The coroner shall summon and examine as witnesses every person who, in his opinion or that of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and to give a professional opinion as to the cause of death; and if it shall be necessary, the coroner may cause a post-mortem examination or chemical analysis to be made, and the expense of such examination or analysis shall be a county charge, to be fixed by the board of supervisors.

Verdict.

SEC. 10. Witnesses produced shall be sworn by the coroner, and the whole of the testimony shall be reduced to writing by the coroner, or under his direction, and signed by the witnesses in the presence of the jury, and each deposition shall have a jurat attached. The jury, after hearing all the testimony offered before them, shall retire as jurors in other cases and deliberate upon their verdict, suffering no one, not even the coroner, to mingle with them in their deliberations; but they may, as in the case of jurors in the courts of law, take the opinion of the coroner upon any question of law that may arise upon the investigation.

District attorney.

SEC. 11. The coroner may call upon the district attorney to assist him in the examination of witnesses, and the jurors may put any proper question to the witness, but the party suspected or charged with the crime shall have no right to produce witnesses on the inquest, or to cross-examine those produced on behalf of the people by himself or counsel; nor shall it be necessary that he be present during the examination. But it shall be the duty of the coroner to examine any witness who he may have reason to believe may know anything concerning the matter pertinent to the inquiry, and to put to any witness any proper and pertinent question that such person may desire. Such party suspected or charged, however, may be attended by counsel on the inquest to advise with him as to his rights in answering any question that may be put to him when under examination. If the party accused of the crime be present at the inquest, and is then charged with the crime, or the testimony tends to criminate him, and he is called upon by the coroner to testify, it is the duty of the coroner first to inform the accused that he is at liberty to refuse to answer any question that he may put to him, otherwise his answer on such examination cannot be read in evidence against him when on trial for the offense. But if such person is not under arrest or charged with the crime, his answer may

be given in evidence against him on his subsequent trial for the crime charged, though the coroner may not have so advised him of his rights. The jury must hear all the evidence offered before them, whether it be in favor of or against any party suspected of the killing.

Investigation not limited.

SEC. 12. Upon the investigation the coroner's jury shall not be limited in their inquiry like a jury upon the trial of one charged with the crime; their duties shall be to determine if a crime has or has not been committed; and if a crime has been committed, who perpetrated or caused the same to be perpetrated, and all the circumstances attending it; and any proper testimony tending in any degree to throw light upon the subject may be properly given. Matters of opinion, except of professional witnesses, or hearsay evidence, shall not be permitted.

Written verdict.

SEC. 13. When the jury shall have agreed upon a verdict they shall reduce their inquisition to writing, which writing shall show before what coroner the same was taken, and that the same was taken upon the oath of good and lawful men of the county, who were first duly sworn; and it must also show by whom and when the same was executed. They shall also find and certify who or in what manner and when and where the person so dead came to his death, and all the circumstances attending such death; and if a crime has been committed in the case who were guilty thereof, either as principal or accessory, and in what manner. The jury shall not be required to find who were accessories after the fact—only those before the fact. If the person who is found dead is unknown, or the person who caused the death is unknown, the jury shall so find; and they shall find, if the fact so appears before them, whether the killing was accidental or suicide, murder or manslaughter, excusable or justifiable homicide; and if the manner of the death is unknown, they shall so state. Such inquisitions shall be signed by such jurors, and the coroner shall certify the fact that the inquest was held, and indorse under the verdict his approval or non-approval of the same.

Jury may separate.

SEC. 14. It shall not be necessary that the jury should be kept together until they have agreed upon a verdict. If there shall appear any irreconcilable opinion as to any material fact concerning which they are to make inquest, the jurors agreeing may find accordingly, and two or more inquisitions may be presented.

Coroner.

SEC. 15. If the jury find that any murder or manslaughter has been committed, the coroner shall bind over the witnesses against the accused to appear and testify at the next court or grand jury, or before any court at which an indictment for such offense can be found and triable that shall be held in the county, and obey all orders of said court in the premises. Such recognizance shall be in writing, and shall be subscribed by the parties to be bound thereby. Said recognizances shall be made payable to the people of the State of California. The amount of the same shall be fixed by the coroner, county judge, or by the district attorney, and approved by the county judge or any of the judges of a court of record; and in case of their refusal to sign such recognizance, the coroner shall have power to commit such witness as in the case of examination of criminals by a magistrate.

Testimony returned to county clerk.

SEC. 16. The testimony of all witnesses examined before a coroner's jury,

together with the inquisition of the jury, and all recognizances taken by such coroner, shall be returned by him forthwith to the county clerk of his county.

Power of coroner.

SEC. 17. The coroner shall have the same power on all investigations or inquests as are allowed by law to judges of courts of record in this state to preserve order in the matter of investigations before him; and for any disrespect shown towards him or contempt of his authority in his investigations by any juror, witness, or other person, he shall have power to issue an order for the arrest of said person or persons, and forthwith to have said person or persons brought before the police judge or county judge of his county, to be punished according to law.

Contempt.

SEC. 18. Any juror, witness or other person summoned as juror, witness, or any other person who may be in attendance on any official investigation, who shall use any disrespectful language towards said coroner, or behave disrespectfully towards said coroner in his presence, shall be declared guilty of contempt, and shall be liable to pay a fine not to exceed one hundred dollars, or be imprisoned in the county jail of said county not to exceed sixty days; said imprisonment to be enforced by any of the magistrates named in the preceding sections, upon the warrant of the coroner as provided for in the last section.

To issue process.

SEC. 19. If the coroner's jury find that any murder or manslaughter has been committed, and the person charged with such offense be not in custody, the coroner shall have power to issue process for the arrest of the person charged. The warrant of arrest must be under the hand of the coroner, and must recite the finding of the jury upon the inquest, and be directed to the sheriff, or to any constable, marshal, or policeman of the county, and commanding the officer to whom it shall be directed forthwith to take the person accused of having committed such offense, and to bring him before a committing magistrate, to be dealt with according to law. The warrant of the coroner shall be served in the same manner, and in the same places as criminal process issued by a justice of the peace in any county of the state, without indorsement by a magistrate of such county.

Burial of indigent dead.

SEC. 20. When the inquest shall be held by the coroner, and there shall be no friends to take charge of the body of the deceased, it shall be the duty of the coroner, after the same has been viewed by him and the jury, to see that it is properly buried, and for that purpose, he shall immediately give notice to the person or firm having the contract for the burial of the indigent dead, for burial of the body, and it shall be buried by him, under the provisions of said contract. [*Amendment, approved March 30, 1874; 1873-4, 908; took effect from passage.*]

Money and valuables.

SEC. 21. It shall be the duty of the coroner to take charge of all money and other valuable things which may be found with or upon the bodies of persons on whom inquests shall be held, when there is no other persons legally entitled to take charge of the same; and he shall forthwith make out and enter in a book to be kept in his office, open to public inspection, a full and complete inventory of all money, and every article or thing of value found with or upon said deceased, and he shall also make an entry in said book, of any note or memorandum found upon said deceased, that may tend, in any way, in the future, to identify said person. Said coroner shall, within thirty days after the

holding of such inquest, deliver over to the treasurer of said city and county, all such money or valuable things which have not been claimed by legal representatives of the deceased or the public administrator. Said coroner shall also keep in his office another book, open to public inspection, in which he shall enter a full description of every article and thing, and all money found with or upon the bodies of deceased persons, or belonging to said deceased persons, that may come into his possession, before he delivers up, or permits the same to go out of his possession; and no money, article, thing, or property of any nature or kind, shall be delivered to any person, until the same shall have been entered in said book as aforesaid, and signed in the presence of said coroner, by the person receiving the same. [*Amendment, approved March 30, 1874; 1873-4, 908; took effect from passage.*]

Failure to perform duties.

SEC. 22. For a failure on the part of the coroner to perform such duty required by the last section, or any of the duties required by this act, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or imprisonment in the county jail not to exceed one year, and shall be liable on his official bond for any and all moneys, chattels, and property which shall be found on said deceased, and which shall or may come into his possession belonging to said deceased; the same to be recovered in the name of any party who may be entitled to recover the same in any court having jurisdiction thereof.

Property, how disposed of.

SEC. 23. Upon the delivery of money so found to the treasurer, he shall place it to the credit of the county. If other property, and perishable in its nature, he shall within thirty days sell the same at public auction, upon reasonable public notice, and shall in like manner place the proceeds to the credit of the county. Other property shall only be sold upon the order of the county judge. If the said money or property in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall, upon legal showing, after deducting the fees and expenses of the coroner, and of the county in relation to the matter, pay the balance thereof to such legal representative.

Statement of coroner.

SEC. 24. Before auditing and allowing the accounts of the coroner, the supervisors of the county shall require a statement from him, in writing, containing an inventory of all money and other valuables found with or upon all persons upon whom inquests shall have been held, and the manner in which the same has been disposed of, verified by the oath or affirmation of the coroner making the same that such statement is in all respects just and true, and that the money and other articles mentioned therein have been delivered to the treasurer of the county, or to the legal representatives of such person or persons.

Coroner to act as sheriff.

SEC. 25. The coroner shall perform the duties of sheriff in all cases when the sheriff is interested or otherwise incapacitated from serving. Whenever the coroner acts as sheriff he shall possess the powers and perform all the duties of the sheriff, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services.

Vacancy.

SEC. 26. If the office of coroner be vacant, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

Record of inquests.

SEC. 27. The coroner of the city and county of San Francisco, in addition to the duties imposed by this act upon every coroner, shall keep a record of all inquests held by him, with a copy of all testimony and the inquisition of the juries in full; and in case of loss of the original records, the same shall be admissible in evidence with like effect as the original would have been.

Deputy coroners and messenger.

SEC. 28. The coroner of said city and county shall be authorized to appoint two clerks, who shall be sworn to act as first and second deputy coroners in all matters, except those duties on inquests which have been forbidden to be delegated by this act. The salary of the clerk sworn to act as first deputy coroner shall not exceed one hundred and fifty dollars per month, and the salary of the clerk sworn to act as second deputy coroner, one hundred and twenty-five dollars per month, which shall be paid from the special fee fund of the said city and county. The coroner of said city and county shall be authorized to appoint a messenger, whose duty it shall be to have charge of the dead-wagon, keep in order the morgue, and perform such other duties as are required by the coroner or his deputies in connection with the duties of his office. He shall receive a salary not to exceed seventy-five dollars per month, to be paid in like manner as that of the coroner's clerks. [*Amendment, approved March 22, 1876; 1875-6, 397; took effect from passage.*]

Supervisors to provide rooms and morgue.

SEC. 29. The board of supervisors of the city and county of San Francisco are hereby authorized to provide a suitable office and jury room and dead-house or morgue, with the furniture necessary to enable the coroner to efficiently discharge the duties of his office, and to make the necessary appropriation therefor. They are further authorized to audit and pay, for the necessary expenses of maintaining the morgue and offices attached, such sum as may be necessary, not to exceed seventy-five dollars per month, to be paid out of the general fund.

Salary.

SEC. 30. The coroner of the city and county of San Francisco shall receive no fees for any services rendered by him, but he shall in lieu thereof receive a salary of four thousand dollars per annum, payable in like manner as other county officers within said county, to be audited by the auditor and paid out of the same fund provided for in the city and county treasury as in the cases of other officers in said city and county.

Repealing.

SEC. 31. All acts or parts of acts in conflict with the provisions of this act, so far as they so far conflict, are hereby repealed. This act shall apply only to the city and county of San Francisco.

SEC. 32. This act shall be in force from and after its passage.

ARTICLE XI.

ASSESSORS, TAX COLLECTORS, SCHOOL SUPERINTENDENTS, PUBLIC ADMINISTRATORS AND COMMISSIONER OF HIGHWAYS.

4300. Duties of assessor.

SEC. 4300. The assessor must perform such duties as are prescribed in Title IX, Part III, of this Code. [See ante, 3607.]

4301. Duties of tax collector.

SEC. 4301. The tax collector must perform such duties as are prescribed in Title IX, Part III, of this Code. [See ante, 3607.]

4302. *Duties of school superintendents.*

SEC. 4302. The school superintendent must perform such duties as are prescribed in Title III, Part III, of this Code. [See ante, 1385.]

4303. *Duties of public administrator.*

SEC. 4303. The public administrator must perform such duties as are prescribed in Chapter XIII, Title XI, Part III, of the Code of Civil Procedure. [See post, 11,726.]

4304. *Duties of commissioner of highways and road overseers.*

SEC. 4304. The commissioner of highways and road overseers must perform such duties as are prescribed in Title VI, Part III, of this Code. [See ante, 2348.]

ARTICLE XII.

CONSTABLES, JUSTICES OF THE PEACE AND INFERIOR OFFICERS.

4314. *Constables to attend justices' courts.*

SEC. 4314. Constables must attend the courts of justices of the peace within their townships whenever so required, and within their counties execute, serve and return all process and notices directed or delivered to them by a justice of the peace of such county or by any competent authority.

4315. *Governed by the law prescribing sheriffs' duties.*

SEC. 4315. All the provisions of Article IV of this chapter, except the fourth and sixth subdivisions of section 4176, apply to constables and govern their powers, duties and liabilities.

4316. *Duties of justices of the peace.*

SEC. 4316. Justices of the peace must perform such duties as are prescribed in Title XI, Part II, of the Code of Civil Procedure, and such other duties as are prescribed by law. [See post, 10,832.]

An Act legalizing the official acts of constables in this state, performed between the first Monday of January and the first Monday of March, 1874.

Approved March 27, 1874; 1873-4, 700.

Official acts of constables declared valid.

SECTION 1. All official acts performed between the first Monday of January and the first Monday of March, eighteen hundred and seventy-four, by the several constables in this state who were elected at the general election held in the month of September, eighteen hundred and seventy-three, are hereby declared valid.

SEC. 2. This act shall take effect immediately.

CHAPTER IV.

SALARIES AND FEES OF OFFICE.

4328. *Salaries of county judges and district attorneys.*

SEC. 4328. The salaries of county judges and district attorneys must be paid monthly from the county treasury, on the warrants of the county auditor. Their salaries are fixed in the succeeding sections of this chapter.

4329. *Salary of county judges fixed.*

SEC. 4329. The salaries of county judges are as follows:

1. Of San Francisco, five thousand dollars;
2. Of Sacramento, three thousand dollars;
3. Of Alameda, twenty-five hundred dollars;
4. Of Nevada and Yuba, twenty-four hundred dollars;

5. Of Amador, Los Angeles, Napa, Placer, San Joaquin, Santa Clara, Solano, and Sonoma, two thousand dollars;

6. Of Butte, Colusa, Contra Costa, El Dorado, Marin, Mendocino, Merced, Siskiyou, Stanislaus, Sutter, Tehama, and Yolo, fifteen hundred dollars;

7. Of Calaveras, Fresno, Humboldt, Kern, Mariposa, Monterey, Plumas, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, and Tuolumne, twelve hundred dollars;

8. Of Alpine, Klamath, Lake, Lassen, San Diego, San Mateo, Trinity, and Tulare, one thousand dollars; and

9. Of Del Norte, Inyo, Mono, and San Bernardino, eight hundred dollars.

[It will be noticed that above section 4328 provides that the salaries of the county judges shall be paid monthly, and section 4329 fixes the salaries at certain sums, without saying "annual" or "per annum." Whatever was meant, the sums so fixed have in some cases been altered by subsequent special and local laws as follows:

In Butte to two thousand dollars per annum, by act of March 27, 1874; 1873-4, 733.

In Colusa to twenty-four hundred dollars per annum, by act of March 30, 1874; 1873-4, 873.

In El Dorado, it seems, to one thousand dollars per annum, by act of March 27, 1872; 1871-2, 592.

In Fresno to eighteen hundred dollars per annum, by act of March 13, 1874; 1873-4, 349.

In Inyo to twelve hundred dollars per annum, by act of February 27, 1874; 1873-4, 177.

In Kern to eighteen hundred dollars per annum, by act of March 13, 1874; 1873-4, 349.

In Lake to one thousand dollars per annum, by act of March 31, 1876; 1875-6, 599.

In Los Angeles to three thousand dollars per annum, by act of February 2, 1872; 1871-2, 62.

In Marin to eighteen hundred dollars per annum, by act of March 18, 1874; 1873-4, 433.

In Mariposa to eighteen hundred dollars per annum, by act of February 7, 1874; 1873-4, 83.

In Merced to sixteen hundred dollars per annum, by act of March 26, 1874; 1873-4, 660.

In Modoc the salary is one thousand dollars per annum, by act of February 17, 1874; 1873-4, 124.

In Napa to eighteen hundred dollars per annum, by act of March 16, 1874; 1873-4, 392.

In San Benito the salary is twelve hundred dollars per annum, by act of February 12, 1874; 1873-4, 95.

In San Bernardino to twelve hundred dollars per annum, by act of February 17, 1874; 1873-4, 101.

In San Diego to two thousand dollars per annum, by act of February 17, 1874; 1873-4, 101.

In San Luis Obispo to two thousand dollars per annum, by act of March 26, 1874; 1873-4, 618; changed to eighteen hundred dollars per annum, after 1880 by act of March 31, 1876; 1875-6, 608.

In San Mateo to two thousand dollars per annum, by act of March 18, 1874; 1873-4, 479.

In Santa Clara to three thousand dollars per annum, by act of March 25, 1874; 1873-4, 610, and by subsequent act of February 10, 1876; 1875-6, 35.

In Santa Cruz to twelve hundred dollars per annum, by act of March 30, 1876; 1875-6, 576.

In Sonoma to three thousand dollars per annum, by act of March 16, 1874; 1873-4, 382.

In Stanislaus to fifteen hundred dollars per annum, by act of March 4, 1874; 1873-4, 277.

In Tulare to eighteen hundred dollars per annum, by act of March 13, 1874; 1873-4, 349.

In Tuolumne to one thousand dollars per annum, by act of February 10, 1876; 1875-6, 45.

In Ventura the salary is twelve hundred dollars per annum, by act of March 26, 1874; 1873-4, 618.

In Yolo to eighteen hundred dollars per annum, by act of March 18, 1874; 1873-4, 420.]

4330. *Salary of district attorneys fixed.*

SEC. 4330. The annual salaries of district attorneys are as follows:

1. Of San Francisco, five thousand dollars.
2. Of Sacramento, thirty-six hundred dollars.
3. Of Los Angeles, three thousand dollars.
4. Of San Joaquin, Santa Clara, and Alameda, twenty-five hundred dollars.
5. Of Butte, seventeen hundred dollars.
6. Of Nevada, two thousand dollars; and of Colusa, eighteen hundred dollars.
7. Of Sonoma, eighteen hundred dollars.
8. Of El Dorado, Placer, Amador, Marin, Contra Costa, Tuolumne, Napa, Yolo, Yuba, and Santa Cruz, fifteen hundred dollars.
9. Of Mariposa, Merced, San Mateo, Shasta, Siskiyou, Stanislaus, Tehama, Fresno, Kern, Mendocino, San Luis Obispo, Santa Barbara, Tulare, San Diego, and Plumas, twelve hundred dollars.
10. Of Monterey, Sutter, Trinity, Sierra, and Calaveras, one thousand dollars.
11. Of Inyo and Lassen, eight hundred dollars.
12. Of Del Norte, Humboldt, Klamath, Lake, and San Bernardino, seven hundred dollars.
13. Of Alpine, six hundred dollars.
14. Of Mono, five hundred dollars. [*Amendment, approved March 28, 1872; 1871-2, 653; took effect from passage.*]

[The foregoing amendment constituted section 1 of "An Act in relation to the political code," approved March 28, 1872; 1871-2, 653. That act contained two additional sections, as follows:]

SEC. 2. With relation to the acts passed at the present session of the legislature, section forty-three hundred and thirty of the Political Code must be construed as though it had been passed on the last day of the present session.

SEC. 3. This act and section forty-three hundred and thirty of the Political Code as herein amended, shall be in force and effect from and after the passage of this act.

An Act in relation to the office of district attorney in Santa Cruz county.

Approved March 20, 1872; 1871-2, 440.

District attorney's fee in Santa Cruz county.

SECTION 1. In all cases where the district attorney of Santa Cruz county secures a conviction of any person charged with felony or misdemeanor, and cannot obtain the fee allowed by law for such conviction from the person convicted, the said fee shall be a charge against the county, and shall be allowed and paid as other claims and charges against said county.

SEC. 2. This act shall take effect immediately.

An Act to better define the duties and fix the compensation of certain officers of Solano county.

Approved March 27, 1872; 1871-2, 624.

Sheriff, license collector.

SECTION 1. The sheriff of Solano county shall be ex officio collector of all

licenses in said county, and receive therefor the fees now allowed by law, and be allowed as jailer a salary of twelve hundred (\$1200) dollars per annum, which shall be paid monthly out of the county treasury of said county.

Salary of county clerk.

SEC. 2. The county clerk of said county shall receive for all services required of him as county clerk and ex officio clerk of the district court, county court, probate court, board of supervisors, and board of equalization, a salary of four thousand dollars per annum, which salary shall be in full for all services required of him as aforesaid, and it shall be paid monthly out of the county treasury. He shall collect and safely keep all fees of whatever kind or nature allowed him by law for services rendered by him in his several official capacities, and upon the first Monday of each and every month shall pay the same over to the county treasurer of said county, and shall at the same time make out and file with said treasurer a full and accurate statement, under oath, of all fees, of whatever kind or nature, received in his several official capacities for the preceding month.

Salary of district attorney.

SEC. 3. The district attorney of said county shall receive a salary of two thousand and two hundred dollars per annum, which shall be paid monthly out of the treasury of said county.

Duty of auditor.

SEC. 4. It shall be the duty of the county auditor of said county, on the first Monday of each and every month, to draw a warrant upon the county treasurer, in favor of the officers herein named, for the amount of salary due each month under the provisions of this act; and said warrants shall be paid in gold and silver coin on presentation to the county treasurer.

SEC. 5. This act shall take effect from and after its passage; and all acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed.

An Act in relation to the fees of district attorneys in certain counties.

Approved March 30, 1872; 1871-2, 799.

Fees of district attorneys in Butte, Inyo, Placer, and Shasta.

SECTION 1. In the counties of Butte, Inyo, Placer, and Shasta, the fees allowed to district attorneys for convictions must be taxed as costs against the defendants, but if the defendant is unable to pay the same, they are a county charge and must be paid out of the county treasury.

SEC. 2. This act shall be in force from and after its passage.

[The salaries of district attorneys in some of the counties, as above fixed, have since been changed by special and local laws as follows:

In Amador to twelve hundred and fifty dollars per annum and certain fees, by act of March 20, 1876; 1875-6, 370.

In Butte to two thousand dollars per annum and certain fees, by act of March 27, 1874; 1873-4, 733.

In Calaveras to one thousand dollars per annum, and payable monthly, and certain fees after March 4, 1878, by act of March 7, 1876; 1875-6, 141.

In Colusa to two thousand dollars per annum, by act of March 30, 1874; 1873-4, 873.

In Contra Costa to eight hundred dollars per annum and fees, by act of March 2, 1876; 1875-6, 91.

In Humboldt to twelve hundred dollars per annum, payable monthly, by act of February 9, 1876; 1875-6, 34.

In Inyo to one thousand dollars per annum, by act of February 27, 1874; 1873-4, 177.

In Lake to seven hundred dollars per annum and certain fees, by act of March 31, 1876; 1875-6, 599.

In Marin to one thousand dollars per annum, by act of March 18, 1874; 1873-4, 433.

In Mariposa to eight hundred dollars per annum, by act of February 7, 1874; 1873-4, 83.

In Merced to one thousand dollars per annum, by act of March 26, 1874; 1873-4, 660.

In Modoc the salary is five hundred dollars per annum and fees, by act of February 17, 1874; 1873-4, 124.

In Napa to one thousand dollars per annum and fees, by act of March 16, 1874; 1873-4, 392.

In Sacramento to forty-two hundred dollars per annum, by act of March 30, 1874; 1873-4, 909. See also acts of April 1, 1872; 1871-2, 863; February 28, 1874; 1873-4, 204; and March 30, 1874; 1873-4, 794.

In San Benito the salary is twelve hundred dollars per annum, by act of February 12, 1874; 1873-4, 95.

In San Bernardino to one thousand dollars per annum, by act of March 22, 1876; 1875-6, 389.

In San Diego to twelve hundred dollars per annum and fees, by act of March 31, 1876; 1875-6, 586.

In San Francisco the district attorney is allowed a second clerk at a salary of one hundred and fifty dollars per month, by act of March 25, 1874; 1873-4, 602.

In San Joaquin to two thousand dollars per annum and fees, by act of March 24, 1874; 1873-4, 575.

In San Luis Obispo to one thousand dollars per annum and certain fees, by act of March 31, 1876; 1875-6, 608.

In Santa Clara to five hundred dollars per annum and fees, by act of March 25, 1874; 1873-4, 610; and subsequent act of February 10, 1876; 1875-6, 35.

In Santa Cruz to five hundred dollars per annum and fees, by act of March 30, 1876; 1875-6, 576.

In Sonoma to eighteen hundred dollars per annum and fees, by act of March 16, 1874; 1873-4, 382.

In Stanislaus to twelve hundred dollars per annum, by act of March 4, 1874; 1873-4, 277.

In Sutter the fees on conviction for felony or misdemeanor are the same as in Lake, by section 21 of act of March 31, 1876; 1875-6, 599.

In Tuolumne to eight hundred dollars per annum and fees, by act of February 10, 1876; 1875-6, 45.

In Ventura the salary is eight hundred dollars per annum, by act of March 26, 1874; 1873-4, 618.

In Yolo to one thousand dollars per annum and fees, by act of March 18, 1874; 1873-4, 420; and by subsequent act of March 9, 1876; 1875-6, 170.]

4331. *Continuing acts fixing salaries and fees of county officers.*

SEC. 4331. Nothing in this code not contained in this chapter affects any of the provisions of the statutes relating to the compensation, salaries, or fees of county or township officers; but all such statutes are recognized as continuing in force, notwithstanding the provisions of this code, except so far as they are affected by or are inconsistent with the provisions of this chapter.

[For references to special statutes referred to in the foregoing section, see under the heads of the respective counties in the latter part of this work.]

4332. *Officer to perform service when fees are paid.*

SEC. 4332. The officers mentioned in this title are not in any case, except for the state or county, to perform any official services, unless upon the prepayment of the fees prescribed for such services, except as in the succeeding section provided by law; and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

4333. *No charge to be made on proceedings under writ of habeas corpus.*

SEC. 4333. No fee or compensation of any kind must be charged or received by any officer for duties performed or services rendered in proceedings upon habeas corpus.

CHAPTER V.

OTHER COUNTY CHARGES.

4343. *County charges to be audited.*

SEC. 4343. Accounts for county charges of every description must be presented to the board of supervisors to be audited, as prescribed in Article III [Chapter II], Title II, Part IV, of this Code. [See ante, 4064.]

4344. *Examination of county charges.*

SEC. 4344. The following are county charges:

1. Charges incurred against the county by virtue of any provision of this title;
2. The compensation of the district attorney, and all expenses necessarily incurred by him in criminal cases arising within the county;
3. The compensation allowed by law to sheriffs and constables for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for service of subpoenas issued by district attorneys, and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law;
4. The expenses necessarily incurred in the support of persons charged with or convicted of crimes and committed therefor to the county jail;
5. The sums required by law to be paid to grand jurors and indigent witnesses in criminal cases;
6. The accounts of the coroner of the county for such services as are not provided to be paid otherwise;
7. All charges and accounts for services rendered by any justice of the peace for services in the examination of persons charged with crime not otherwise provided for by law;
8. The necessary expenses incurred in the support of county hospitals, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county;
9. The contingent expenses necessarily incurred for the use and benefit of the county;
10. Every other sum directed by law to be raised for any county purpose under the direction of the board of supervisors, or declared to be a county charge;
11. The salary of the commissioner of highways must be paid at the close of each quarter.

4345. *Costs of criminal action removed.*

SEC. 4345. When a criminal action is removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the indictment was found. [New section, approved February 28, 1874; Amendments 1873-4, 175; took effect immediately.]

4346. *Proceedings in collection of such costs.*

SEC. 4346. The clerk of the county to which such action is removed, shall certify the amount of costs allowed and certified by the court to the auditor of his county, and such auditor shall audit the same and draw his warrants therefor upon the treasury of the county from which such action was removed; and such auditor shall forward to said treasurer and auditor of the county from which said action was transferred, as aforesaid, a certified copy of the total amount of costs allowed by the court, giving each item as certified to him by the county

clerk and the court, and the auditor receiving such certified copy of said costs allowed, shall enter the same in his books as a charge against the treasury of his county, and the county treasurer of the county from which such action was removed, must immediately upon presentation pay said warrant out of the general fund of said county; or, if at the date of presentation there is not sufficient moneys in the said general fund to pay the same, he must indorse upon said warrant "Not paid for want of funds;" and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the auditor of the county where the indictment was found. [*New section, approved February 28, 1874; Amendments 1873-4, 175; took effect immediately.*]

4347. *Provisions of code, to what actions to apply.*

SEC. 4347. Sections 4345 and 4346 of this code shall apply to all criminal actions which have been or may be removed for trial since the first day of January, eighteen hundred and seventy-three. [*New section, approved February 28, 1874; Amendments 1873-4, 175; took effect immediately.*]

TITLE III.

The Government of Cities.

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CHAPTER I.

CITIES AS BODIES CORPORATE.

4354. *General powers.*

SEC. 4354. A city is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this title or in special laws.

4355. *Distribution of powers.*

SEC. 4355. Every city has legislative, executive, and judicial power. Its legislative power is vested in a common council; its executive power in a mayor and his subordinate officers; and its judicial power in a police court.

4356. *City declared by legislature.*

SEC. 4356. Every subdivision of a county not exceeding in extent six square miles, with not less than two thousand inhabitants, with its metes and bounds fixed and defined, and declared by act of the legislature to be a "municipal corporation," is a city with the powers conferred by this title.

4357. *Boundaries, how changed.*

SEC. 4357. The boundary of a city may be changed by an act of the legislature, on petition of a majority of the common council, presented in pursuance of a city ordinance, or, as hereinafter provided, by the board of supervisors.

[SECS. 4358 to 4365, inclusive,^(a) were repealed by act approved March 28,

(a) The repealed sections, on account of their length and the fact that they never went into effect, are omitted. They provided that "whenever the residents of a county adjoining the boundary of a city therein desire to become incorporated therewith,"

they should present a petition to the board of supervisors therefor, etc., etc. They were superseded, as above stated, by the operation of the act of February 1, 1872, which was itself subsequently repealed by act of March 23, 1874; 1873-4, 535.

1874; Amendments 1873-4, 177; took effect immediately. They had, however, been previously superseded by the operation of a separate act relating to the same subject-matter, approved February 1, 1872; 1871-2, 50. This last-named act, entitled "An Act to enable the inhabitants of territory adjacent to any city in this state to annex the same thereto," was repealed by act approved March 23, 1874; 1873-4, 535.]

4366. *Act to fix time of the first election.*

SEC. 4366. The act of the legislature declaring a city to be a "municipal corporation" must fix a day for the first election of city officers, and fix the number of members of the "common council" to be elected for the first year.

4367. *First election, when and how held.*

SEC. 4367. Notice of the first election of city officers must be given by the county judge of the county, by publishing the same in a newspaper published in the city for four weeks successively, designating the officers to be elected, the polling places, and the officers of election. The returns must be made to the county judge, who must count and declare the vote, and issue certificates of election.

4368. *Who are city electors.*

SEC. 4368. The qualified electors of the city who have resided within the city limits for thirty days next preceding the election are qualified to vote at all city elections.

4369. *Officers.*

SEC. 4369. The common council must, during the first year, by ordinance, fix the term of office of all elective officers, and the time when they must be elected, and provide for the appointment of other necessary officers, including city clerk, city attorney, and treasurer, and fix their terms and amount of their bonds. [*Amendment, approved March 30, 1874; Amendments 1873-4, 57; took effect July 6, 1874.*^(a)]

4370. *Officers of cities.*

SEC. 4370. The elective officers of cities are: a mayor, a marshal, a police judge, assessor and collector of taxes, and a common council, consisting of not less than three members. They must be electors of the city, and qualify by taking the statutory oath of office, and, except the first officers elected, hold office for a term to be fixed by the common council, not exceeding two years. [*Amendment, approved March 30, 1874; Amendments 1873-4, 58; took effect July 6, 1874.*^(b)]

4371. *Direct taxes.*

SEC. 4371. The direct taxes imposed by the common council in any one year must not exceed two per centum of the valuation of property within the city.

4372. *Condemnation of private property for city use.*

SEC. 4372. Whenever it becomes necessary for the city to take private property for the purposes of laying out or altering streets or alleys, and the council cannot agree with the owner thereof as to the price to be paid, the council may direct proceedings to be taken under Title VII, Part III, of the Code of Civil Procedure, to procure the same. [See post, 11,237.]

4373. *Vacancies in office.*

SEC. 4373. If any person elected to a city office removes from the city, absents himself for more than thirty days without leave from the council, or fails to qualify within ten days after election, his office is vacant.

^(a) The original section had the words "assessor and collector of taxes" before "city clerk."

^(b) The original section did not have the words "assessor and collector of taxes."

4374. Official oath and bond.

SEC. 4374. All city officers, before entering upon their duties, must take the oath of office. The marshal, attorney, clerk, assessor, collector, and treasurer, must also give a bond, with sureties to be approved by the mayor, payable to the corporation by its corporate name, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office, and a like bond may be required of any officer whose office is created by an ordinance. Should the bond of any city officer become insufficient, he may be required to give additional bond; and, upon his failure so to do, his office must be deemed vacant. [*Amendment, approved March 30, 1874; Amendments 1873-4, 58; took effect July 6, 1874.*^(a)

CHAPTER II.

EXECUTIVE POWERS.

4385. Executive officers of a city.

SEC. 4385. The executive officers of a city are the mayor, marshal, and such officers for the assessment, collection, auditing, safe keeping, and disbursing the revenue and keeping the records and journals of the city, as the common council may provide.

4386. Powers of mayor.

SEC. 4386. The mayor has power:

1. To nominate, and with the consent of the common council, to appoint all non-elective officers of the city provided for by the common council, including city attorney, secretary of the council, and city treasurer;

2. To suspend, and with the consent of the common council, to remove any non-elected officer, stating in the suspension or removal the cause thereof;

3. To cause the ordinances of the city to be executed, and to supervise the discharge of official duty by all subordinate officers;

4. To communicate to the common council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city, with such recommendations as he may deem proper;

5. To recommend to the common council such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he deems expedient;

6. To approve all ordinances of the common council adopted by it, and in case the same do not meet his approbation, to return the same, with his objections, within five days after he receives the same. [*Amendment, approved March 30, 1874; Amendments 1873-4, 59; took effect July 6, 1874.*^(b)

4387. Accounts and demands, how audited and paid.

SEC. 4387. All accounts and demands against said city must be audited by the president of the common council, and no money must be drawn from the city treasury, unless upon the certificate of the president, by order of the council. The certificate must be drawn upon the treasurer of the city, and must specify the fund out of which the same is payable. The treasurer must pay the same out of any money in his hands belonging to such fund.

4388. Mayor, president of the common council.

SEC. 4388. The mayor is the president of the common council, must sign the journals thereof, decide by his voice all tie votes, must sign the warrants on the city treasurer, and is the keeper of the city seal.

(a) The original section did not have the word "collector."

(b) The original section in the first subdivision after including had the words "assessor and collector of revenue."

4389. *Duties of city marshal.*

SEC. 4389. The city marshal, in addition to the duties prescribed by the common council, must execute and return all process issued by the police judge, or directed to him by any legal authority, and attend upon the police court regularly. He may appoint one or more deputies; and must arrest all persons guilty of a breach of the peace or for the violation of any city ordinance, and bring them before the police judge for trial, and has superintending control over the city police; and, until otherwise provided by ordinance, must perform all duties of collector of city taxes.

4390. *Duties of assessor.*

SEC. 4390. The assessor, in addition to the duties prescribed by the common council, must make out, within such time as the common council orders, a correct list of all the taxable property within the city limits, with the valuation thereof, which list certified by him must be returned to the common council. The mode of making out the list and of ascertaining the value of property, and of collecting all taxes, is the same as prescribed in this code for assessing and collecting the state tax.

4391. *Duties of city attorney.*

SEC. 4391. The city attorney must attend to all suits, matters, and things in which the city may be legally interested; to give his advice or opinion in writing whenever required by the mayor or common council, and do and perform all such things touching his office as by the common council may be required of him.

4392. *Duties of treasurer.*

SEC. 4392. The treasurer must receive all moneys that come to the city either from taxation or otherwise, and pay the same out on the certificate of the president of the common council, and do and perform all other acts as are prescribed for him by the common council. He must, on the first days of January, April, July, and October of each year, make out and present to the mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the mayor must cause to be published.

4393. *Duties of clerk.*

SEC. 4393. The city clerk is clerk of the common council; must keep the journal of their proceedings and all records of the city; he must keep the accounts of the city, and countersign all warrants on the city treasurer; keep a true account thereof and of the financial condition of the city, and do such other things as the common council may by ordinance provide.

CHAPTER III.

LEGISLATIVE POWERS.

4403. *Common council.*

SEC. 4403. The common council consists of not less than three citizens of the city, elected one from each of the wards. The mayor is the presiding officer thereof.

4404. *Wards, and number of.*

SEC. 4404. The common council has power to divide the city into a convenient number of wards, fix the boundaries thereto, and may change the same from time to time as they see fit, having regard to the number of white male inhabitants, so that each ward contains as near as may be the same number of inhabitants. The number of wards of any city must not exceed the number of councilmen to which the city is entitled; and when a city has been so divided the councilmen must be elected from the several wards respectively, according to the number of inhabitants.

4405. *First meeting.*

SEC. 4405. The members of the common council must assemble within five days after their election, and choose some suitable person as clerk. In case of the absence of the mayor they may elect a president pro tempore, who has all the powers and must perform all the duties of the president. They must, by ordinance, fix the times and places of holding their stated meetings, and may be convened by the mayor at any time.

4406. *Quorum.*

SEC. 4406. A majority of the members of the common council constitutes a quorum to do business; but a less number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the council may by ordinance prescribe.

4407. *May make rules, etc.*

SEC. 4407. The common council is the judge of the qualification, elections, and returns of their own members and the other officers elected under the provisions of this title. They may determine contested elections; they may provide rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and, with the concurrence of two thirds of their number, expel any member, but not a second time for the same cause; they must keep a journal of their proceedings, and at the desire of any member must cause the yeas and nays to be taken and entered on any question; and their proceedings must be public.

4408. *Additional powers of common council.*

SEC. 4408. The common council has power:

1. To create the offices of city clerk, city attorney, assessor, and collector, and such other offices as may be necessary, and prescribe their duties and fix their compensation;

2. To establish and fix the salaries of the mayor, police judge, and other city officers, and also fix a tariff of fees for the officers entitled to such, designating the fees allowed for each particular item of service, and cause the same to be published in like manner with the ordinances passed by the common council;

3. To manage the finances and property of the city;

4. To regulate the streets, wharves, piers, and chutes in the city, and the use thereof;

5. To establish or authorize slaughter-houses and markets, and regulate the same;

6. To provide for lighting, watering, and cleaning the city, and protecting it against fire;

7. To license and regulate hacks, cabs, carts, omnibuses, railway cars, and all other vehicles, butchers, porters, pawnbrokers, peddlers, showmen, and junk-shop keepers, theatres, and all other places of public amusement;

8. To provide for licensing any or all business not prohibited by law, and fix the amount of license tax for the same;

9. To regulate the keeping and use of animals, and the keeping and use of gunpowder and other dangerous substances;

10. To suppress gaming, gambling-houses and other disorderly houses, nuisances of every description, and all kinds of vice and immorality;

11. To prohibit the burial of the dead within the city, except at such places and in such manner as the common council may determine;

12. To establish and regulate a police department;

13. To establish and regulate a fire department;

14. To impose penalties for the violation of ordinances; but no single penalty

must exceed a fine of five hundred dollars, or imprisonment for ten days, or both.

15. To impose and appropriate fines, penalties, and forfeitures for breaches of ordinances;

16. To make by-laws and ordinances not repugnant to the constitution and the laws of the United States or of this state;

17. To require any land or building to be cleansed at the expense of the owner or occupant, and upon his default, may do the work and assess the expense upon the land or building;

18. To establish a board of health to prevent the introduction and spreading of disease, or to ordain and adopt for the government of the city the "quarantine" or "health regulations," provided by this code for San Francisco or Sacramento;

19. To levy and collect taxes, to lay out, extend, alter or widen streets and alleys, and make appropriations for any object of city expenditures;

20. To erect and maintain poorhouses and hospitals, and pass such by-laws and ordinances for the regulation of the police as they may deem necessary. All ordinances must be published in the manner prescribed by the common council.

4409. *Street improvements, how made.*

SEC. 4409. Whenever the owners of a major part of the property fronting on any street or avenue desire to improve such street by paving the same, or constructing sewers, or otherwise, the mayor and council may make such improvement at the expense of all the owners of property on the street, which expense must be in proportion to the number of feet owned by each.

4410. *To grant authority to gas and water companies.*

SEC. 4410. The common council, by ordinance, approved by the mayor, may grant to any gas or water company the privilege of laying down pipes in the streets and alleys of such city for supplying gas and water for the streets and buildings thereon, for a term not exceeding twenty-five years.

4411. *Reservations by cities.*

SEC. 4411. In exercising the authority mentioned in preceding section, the common council must reserve the right to grant similar privileges to other companies, and require the laying down of the pipes to be under the reasonable direction of the city authorities, and to be so laid as to do no injury to the proper use of the paving, planking, or macadamizing of the streets and alleys, nor to private property situate thereon.

4412. *Contract for gas and water.*

SEC. 4412. The common council may contract with gas and water companies for supplying the streets and public buildings with all gas and water necessary for their proper use; the rates to be paid therefor must not be fixed for a term exceeding five years, and the city authorities must reserve the right to abrogate such contract whenever gas or water is offered to be supplied at two thirds of such fixed contract price.

4413. *Restrictions and conditions to be imposed.*

SEC. 4413. In granting authority to lay down pipes, and in contracting for gas and water, the common council must impose such restrictions and conditions, and provide for such locations and construction of gas and water works and pipes as to work the least possible public or private inconvenience, and provide for enforcing such restrictions and conditions.

4414. *Ordinance, how vetoed, and how passed over veto.*

SEC. 4414. Every ordinance passed by the common council must before it

becomes effective be presented to the mayor for his approbation. If he approve it, he must sign it; if not, he must return it, with his objections in writing, to the common council, who must cause the same to be entered upon its journals, and proceed to reconsider the same. If after such consideration two thirds of all the members of the common council elect shall agree to pass the same, it becomes an ordinance. In all such cases the votes must be taken by yeas and nays, and the names of the members voting for and against the same must be entered on the journal. If any ordinance is not returned by the mayor within ten days (Sundays excepted) after it is presented to him, the same becomes effective, as if the mayor had signed it.

CHAPTER IV.

JUDICIAL POWERS.

4424. *Police judge—Vacancy, how filled.*

SEC. 4424. The city police judge must be a qualified elector of the city. Any vacancy in the office of police judge must be filled by an appointee of the mayor, made with the advice and consent of the common council.

4425. *Police court clerk.*

SEC. 4425. The police judge may appoint a clerk, with such compensation, by way of salary or fees, as the common council may by ordinance provide.

4426. *Criminal jurisdiction.*

SEC. 4426. The police court has exclusive jurisdiction of the following public offenses committed within the city boundaries.

1. Petit larceny;
2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill;
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment; and,
4. Of proceedings respecting vagrants, lewd, or disorderly persons.

[Attention may be called to an amendatory act of February 13, 1872; 1871-2, 84, as to the jurisdiction of the police court of the city and county of San Francisco, without any expression of opinion as to its effect.]

4427. *General and exclusive jurisdiction.*

SEC. 4427. The police court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city, both civil and criminal;
2. Of any action for the collection of taxes and assessments levied for city purposes; or for the erection or improvement of any schoolhouse or public buildings; for the laying out or opening or improving any public street or sidewalk, lane, alley, bridge, wharf, pier, or dock; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made and ordered by the city within its limits, when the amount of the tax or assessments sought to be collected against the person assessed is less than three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action;
3. Of an action for the collection of money due to the city, or from the city to any person, when the amount sought to be collected, exclusive of interest and costs, is less than three hundred dollars;
4. For the breach of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party

or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city; and upon all bonds given upon any appeal taken from the judgment of the court in any action above named where the amount claimed, exclusive of costs, is less than three hundred dollars;

5. For the recovery of personal property belonging to the city, when the value of the property (exclusive of the damages for the taking or detention) is less than three hundred dollars; and

6. Of an action for the collection of any license required by any ordinance of the city.

4428. *When justice of the peace to act as police judge.*

SEC. 4428. In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree; and in case of his sickness or inability, the police judge may call in a justice of the peace residing in the city to act in his place and stead.

4429. *Terms.*

SEC. 4429. Police courts are always open for the transaction of business, except on non-judicial days.

4430. *Form of proceedings.*

SEC. 4430. Proceedings in the police court in criminal actions for offenses not triable in such courts must be had in conformity with the provisions of Part II, Title III, Chapter VII, of the Penal Code. [See post, 13,858.]

4431. *Trials in police courts.*

SEC. 4431. Proceedings in the police courts in criminal actions triable in such courts are regulated in Part II, Title XI, Chapter I, of the Penal Code. [See post, 14,426.]

4432. *Civil practice in police courts.*

SEC. 4432. Proceedings in the police courts in civil actions are regulated by Part II, Title XII, of the Code of Civil Procedure. [See post, 10,929.]

CHAPTER V.

CERTAIN STATUTES RELATING TO CITIES AND TOWNS AND EXISTING CORPORATIONS, CONTINUED.

4442. *Certain statutes continued in force.*

SEC. 4442. Nothing in this code affects any of the provisions of "An Act to authorize and direct the municipal authorities of the several cities and incorporated towns of this state to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this state by the act of congress entitled an act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March twenty-four, eighteen hundred and sixty-eight;" or of "An Act to authorize and direct the county judges of the several counties of this state to execute certain trusts in relation to the town lands granted to the unincorporated towns in this state by the act of congress entitled an act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven; approved March thirtieth, eighteen hundred and sixty-eight;" but such acts are continued in force. [See post, 15,959.]

TITLE IV.

Liabilities of Counties and Cities for Injuries to Property
by Mobs or Riots.

CHAPTER I.

4452. *Municipal corporations responsible for certain acts.*

SEC. 4452. Every municipal corporation is responsible for injuries to real or personal property situate within its corporate limits done or caused by mobs or riots.

4453. *Such actions must be tried, where.*

SEC. 4453. Actions for damages under the preceding section must be tried in the county in which the property injured is situated.

4454. *When action must be commenced.*

SEC. 4454. All actions herein provided for must be commenced within one year after the act complained of is committed.

4455. *Warrant to be issued for payment of damages—Tax therefor.*

SEC. 4455. On the certificate of the presiding officer or of the clerk of the court in which the judgment is rendered, the board of supervisors of the county or the legislative authority of the city must by ordinance direct and cause to be issued a warrant for the payment thereof on the general fund, and the same must be paid in its regular order, as other warrants of the municipal corporation are paid; and must at the proper times levy and cause to be collected a tax on the taxable property of such municipal corporation for the payment of such warrant within a period of not more than three years.

4456. *Plaintiff not to recover if damage resulted from his own neglect.*

SEC. 4456. The plaintiff in any action authorized by this title must not recover if it appears upon the trial that the damage complained of was occasioned or in any manner aided, sanctioned, or permitted by his carelessness or negligence.

4457. *Application of this title.*

SEC. 4457. The provisions of this title and chapter are applicable to cases where the levees and other works of reclamation of any district are injured, or destroyed by mobs or riots; and the actions brought for damages therefor must be prosecuted by the attorney-general of the state in the name of the people of the State of California; and the amount recovered in such actions must be paid to the treasurer of the county, who must place the same to the credit of the district. [*New section, approved March 30, 1874; Amendments 1873-4, 59; took effect July 6, 1874.*]

[The amendatory act of March 30, 1874 (Amendments 1873-4, 1-60), from which most of the foregoing amendments and new sections of the Political Code are taken, contained three additional sections, relating to its effect, as follows:]

Repealing clause.

SEC. 116. All provisions of law inconsistent with the provisions of this act are hereby repealed; but no rights acquired, or proceedings taken, under the provisions repealed, shall be impaired, or in any manner affected by this repeal; and whenever a limitation or period of time prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose,

has begun to run before this act takes effect, and the same or any other limitation is prescribed by this act, the time which shall have run when this act takes effect, shall be deemed part of the time prescribed by this act.

Act, how construed.

SEC. 117. With relation to the laws passed at the present session of the legislature, this act must be construed as though it had been passed on the first day of the present session, and, if any of the provisions of this act contravene or are inconsistent with the provisions of any law passed at the present session of the legislature, then the provisions of such law must prevail.

SEC. 118. This act shall take effect on the first Monday of July, one thousand eight hundred and seventy-four, except so much thereof as relates to immigration, and the authority and duties of the commissioner of immigration, and the enforcement of the duties and penalties therein prescribed, which shall take effect immediately after its enactment.

PART V.

OF THE DEFINITION AND SOURCES OF LAW—EFFECT AND PUBLICATION OF THE CODES, AND THE EXPRESS REPEAL OF STATUTES.

TITLE I. DEFINITION AND SOURCE OF THE LAW.....	4466
II. EFFECT OF THE CODES.....	4478
III. PUBLICATION OF THE CODES, AND STATUTES CONTINUED IN FORCE.....	4494
IV. EXPRESS REPEAL OF STATUTES.....	4504

TITLE I.

Definition and Sources of the Law.**4466.** *Definition of law.*

SEC. 4466. Law is a solemn expression of the will of the supreme power of the state.

4467. *How expressed.*

SEC. 4467. The will of the supreme power is expressed:

1. By the constitution;
2. By statutes.

4468. *Common law, when rule of decision.*

SEC. 4468. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution or laws of this state, is the rule of decision in all the courts of this state.

TITLE II.

Effect of the Codes.**4478.** *Construction of the codes with relation to the laws passed at the present session.*

SEC. 4478. With relation to the laws passed at the present session of the legislature, the Political Code, Civil Code, Code of Civil Procedure, and Penal Code, must be construed as though each had been passed on the first day of the present session.

4479. *Laws passed at present session prevail.*

SEC. 4479. If the provisions of any law passed at the present session of the legislature contravene or are inconsistent with the provisions of either of the four codes, the provisions of such law must prevail.

4480. *Construction of codes with relation to each other.*

SEC. 4480. With relation to each other, the provisions of the four codes must be construed (except as in the next two sections provided) as though all such codes had been passed at the same moment of time, and were parts of the same statute.

4481. *Conflicts between titles, which to prevail.*

SEC. 4481. If the provisions of any title conflict with or contravene the provisions of another title, the provisions of each title must prevail as to all matters and questions arising out of the subject-matter of such title.

4482. *Conflicts between chapters, which to prevail.*

SEC. 4482. If the provisions of any chapter conflict with or contravene the provisions of another chapter of the same title, the provisions of each chapter must prevail as to all matters and questions arising out of the subject-matter of such chapter.

4483. *Conflicts between articles, which to prevail.*

SEC. 4483. If the provisions of any article conflict with or contravene the provisions of another article of the same chapter, the provisions of each article must prevail as to all matters and questions arising out of the subject-matter of such article.

4484. *Conflicting sections of the same title, which to prevail.*

SEC. 4484. If conflicting provisions are found in different sections of the same chapter or article, the provisions of the sections last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter or article.

TITLE III.

Publication of the Codes.**4494.** *Codes not published as part of the statutes.*

SEC. 4494. The codes passed at this session of the legislature must not be published as part of the statutes passed at this session, but provision must be made by law for their publication.

TITLE IV.

Express Repeal of Statutes.**4504.** *Repeal of repealed statutes not to imply that they were in force.*

SEC. 4504. The repeal of any statute or part of a statute heretofore repealed, must not be construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

4505. *Express repeal of statutes to be provided for.*

SEC. 4505. The express repeal of statutes will be provided for by a separate statute, and such statute, after its passage, must be construed in the same manner, and must have like effect as if it were part of this code.

Civil Code.

An Act to establish a civil code.

Approved March 21, 1872.

TITLE OF THE ACT.

5001. *Title and divisions of this act.*

SECTION 1. This act shall be known as THE CIVIL CODE OF THE STATE OF CALIFORNIA, and is in four divisions, as follows:

I. THE FIRST RELATING TO PERSONS.....	5025
II. THE SECOND TO PROPERTY.....	5654
III. THE THIRD TO OBLIGATIONS.....	6427
IV. THE FOURTH CONTAINS GENERAL PROVISIONS RELATING TO THE THREE PRECEDING DIVISIONS.....	8274

PRELIMINARY PROVISIONS.

5002. *When this code takes effect.*

SEC. 2. This code takes effect at twelve o'clock noon, on the first day of January, eighteen hundred and seventy-three.

5003. *Not retroactive.*

SEC. 3. No part of it is retroactive, unless expressly so declared.

5004. *Rules of construction.*

SEC. 4. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

5005. *Provisions similar to existing laws, how construed.*

SEC. 5. The provisions of this code, so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments.

5006. *Actions, etc., not affected.*

SEC. 6. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions.

5007. *Holidays.*

SEC. 7. Holidays, within the meaning of this code, are: every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday.

5008. Same.

SEC. 8. If the first of January, the twenty-second of February, the fourth of July, or the twenty-fifth of December falls upon a Sunday, the Monday following is a holiday.

5009. Business days.

SEC. 9. All other days than those mentioned in the last two sections are to be deemed business days for all purposes.

5010. Computation of time.

SEC. 10. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

5011. Certain acts not to be done on holidays.

SEC. 11. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

5012. Joint authority construed.

SEC. 12. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

5013. Words and phrases, how construed.

SEC. 13. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

5014. Certain terms defined.

SEC. 14. Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in this code the signification attached to them in this section, unless otherwise apparent from the context:

Property.

1. The word "property" includes property, real and personal.

Real property.

2. The words "real property" are coextensive with lands, tenements, and hereditaments.

Personal property.

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Month.

4. The word "month" means a calendar month, unless otherwise expressed.

Will.

5. The word "will" includes codicils. [*Amendment, approved March 30, 1874; Amendments 1873-4, 181; took effect July 1, 1874.*^(a)]

[Secs. 15, 16 and 17^(b) were repealed by act approved March 30, 1874; Amendments 1873-4, 182; took effect July 1, 1874.]

5018. *Notice, actual and constructive.*

SEC. 18. Notice is:

1. Actual—which consists in express information of a fact; or,
2. Constructive—which is imputed by law.

5019. *Constructive notice.*

SEC. 19. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact. [*Amendment, approved March 30, 1874; Amendments 1873-4, 182; took effect July 1, 1874.*^(c)]

5020. *Effect of repeal.*

SEC. 20. No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed or abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided.

5021. *This act, how cited.*

SEC. 21. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "The Civil Code," adding, when necessary, the number of the section.

(a) The original section consisted of twenty-nine subdivisions, and is omitted on account of its length. In addition to the terms defined in the amendment, it gave, or attempted to give, definitions of "paper," "land," "compound interest," "year," "A. D.," "state," "third persons," "persons of unsound mind," "children," "several," "writ," "process," "debtor," "usual," "customary," "usage," "verdict," "value" and "seal."

(b) Repealed sections:

SEC. 15. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.

SEC. 16. There are three degrees of care and diligence: 1. Slight, which is such as persons of ordinary

prudence usually exercise about their own affairs of slight importance; 2. Ordinary, which is such as persons of ordinary prudence usually exercise about their own affairs of ordinary importance; 3. Great, which is such as persons of ordinary prudence usually exercise about their own affairs of great importance.

SEC. 17. There are three degrees of negligence: 1. Slight, which consists in the want of great care and diligence; 2. Ordinary, which consists in the want of ordinary care and diligence; 3. Gross, which consists in the want of slight care and diligence.

(c) Original section:

SEC. 19. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, has constructive notice of the fact itself.

DIVISION FIRST.

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PART I.

PERSONS.

5025. *Minors, who are.*

SEC. 25. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

5026. *Periods of minority, how calculated.*

SEC. 26. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

5027. *Adults, who are.*

SEC. 27. All other persons are adults.

[SEC. 28^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 182; took effect July 1, 1874.]

5029. *Unborn child.*

SEC. 29. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

[SECS. 30 and 31^(b) were repealed by act approved March 30, 1874; Amendments 1873-4, 182; took effect July 1, 1874.]

5032. *Custody of minors.*

SEC. 32. The custody of minors and persons of unsound mind is regulated by Part III of this Division.

5033. *Minor, disabilities of.*

SEC. 33. A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control. [Amendment, approved March 30, 1874; Amendments 1873-4, 182; took effect July 1, 1874.^(c)

5034. *Minor, rights of.*

SEC. 34. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the titles on marriage, and on master and servant. [Amendment, approved March 30, 1874; Amendments 1873-4, 183; took effect July 1, 1874.^(d)

(a) Repealed section:

SEC. 28. The marriage of minors changes their status from minors to adults.

(b) Repealed sections:

SEC. 30. Persons made adults by the laws of a state or foreign country in which they were domiciled, are adults in this state when they become domiciled here-in.

SEC. 31. Minors by the laws of another state or foreign country, wherein they have been domiciled, are not deemed adults under this code so as to affect or

alter their rights in relation to contracts made in such state or foreign country.

(c) Original section:

SEC. 33. A minor cannot give a delegation of power.

(d) Original section:

SEC. 31. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this title, and to the provisions of the title on marriage.

5035. Minor, disaffirmance of contract.

SEC. 35. In all cases other than those specified in sections 36 and 37, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent. [*Amendment, approved March 30, 1874; Amendments 1873-4, 183; took effect July 1, 1874.*^(a)]

5036. Cannot disaffirm contract for necessities.

SEC. 36. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them. [*Amendment, approved March 30, 1874; Amendments 1873-4, 183; took effect July 1, 1874.*^(b)]

5037. No certain obligations.

SEC. 37. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

5038. Persons without understanding, disabilities and liabilities of.

SEC. 38. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. [*Amendment, approved March 30, 1874; Amendments 1873-4, 183; took effect July 1, 1874.*^(c)]

5039. Contracts of insane subject to rescission.

SEC. 39. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this act. [*Amendment, approved March 30, 1874; Amendments 1873-4,*

§ 40. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, or waive any right, until his restoration to capacity. But a certificate from the Medical Superintendent or Resident Physician of the Insane Asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge. [In effect May 29, 1878.]

adjudged.

7 determined, a person of unsound mind, but not entirely without understanding, may make a conveyance or other contract before his incapacity has been judicially determined, subject to rescission, as provided in the chapter on rescission of this act.

5041. Minors liable for wrongs, but not liable for exemplary damages.

SEC. 41. A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

(a) Original section:

SEC. 35. In all cases other than those specified by sections 36 and 37, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterward, or, in case of his death within that period, by his heirs or personal representatives.

(b) Original section:

SEC. 36. A minor, or a person of unsound mind of whatever degree, cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or for that of his family, entered

into by him when not under the care of a parent or guardian able to provide for him.

(c) Original section:

SEC. 38. A person entirely without understanding has no power to contract, except in the case mentioned in section 36, unless expressly authorized by statute.

(d) Original section:

SEC. 39. A person of unsound mind, but not entirely without understanding, may make a conveyance or other contract before his incapacity has been judicially determined, subject to rescission, as provided in the chapter on rescission.

5042. *Minors may enforce their rights.*

SEC. 42. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PART II.

PERSONAL RIGHTS.

5043. *General personal rights.*

SEC. 43. Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

5044. *Defamation, what.*

SEC. 44. Defamation is effected by:

1. Libel;
2. Slander.

5045. *Libel, what.*

SEC. 45. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

5046. *Slander, what.*

SEC. 46. Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;
4. Imputes to him impotence or a want of chastity; or,
5. Which, by natural consequence, causes actual damage.

5047. *What publications are privileged.*

SEC. 47. A privileged publication is one made:

1. In the proper discharge of an official duty;
2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law;
3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information;

4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof. [*Amendment, approved March 30, 1874; Amendments 1873-4, 184; took effect July 1, 1874.*^(a)]

5048. Malice not inferred.

SEC. 48. In the cases provided for in subdivisions 3 and 4 of the preceding section, malice is not inferred from the communication or publication.

5049. Protection to personal relations.

SEC. 49. The rights of personal relation forbid:

1. The abduction of a husband from his wife, or of a parent from his child;
2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master;
3. The seduction of a wife, daughter, orphan sister, or servant;
4. Any injury to a servant which affects his ability to serve his master.

5050. Right to use force.

SEC. 50. Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest. [*Amendment, approved March 30, 1874; Amendments 1873-4, 184; took effect July 1, 1874.*^(b)]

PART III.

PERSONAL RELATIONS.

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TITLE I.

Marriage.

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CHAPTER I.

THE CONTRACT OF MARRIAGE.

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(a) The original section differed in the second and third subdivisions, which were as follows:

2. In testifying as a witness in any proceeding authorized by law to a matter pertinent and material, or in reply to a question allowed by the tribunal.

3. In a communication, without malice, to a person interested therein, by one who was also interested, or who stood in such a relation to the former as to afford

a reasonable ground for supposing his motive innocent, or who was requested by him to give the information.

The fourth subdivision had the words "in a newspaper" between the words "report" and "without."

(b) The original section instead of "or member of one's family, or of," had the words "to the third degree." It did not have the word "guest."

ARTICLE I.

VALIDITY OF MARRIAGE.

5055. *What constitutes marriage.*

SEC. 55. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations.

5056. *Minors capable of contracting marriage.*

SEC. 56. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

5057. *Marriage, how manifested and proved.*

SEC. 57. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

5058. *Marriage, when voidable.*

SEC. 58. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. [*Amendment, approved March 30, 1874; Amendments 1873-4, 185; took effect July 1, 1874.*^(a)]

5059. *Incompetency of parties to.*

SEC. 59. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

5060. *Of whites and negroes or mulattoes, void.*

SEC. 60. All marriages of white persons with negroes or mulattoes are illegal and void.

5061. *Second marriage, when illegal and void.*

SEC. 61. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved;
2. Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal. [*Amendment, approved March 30, 1874; Amendments 1873-4, 185; took effect July 1, 1874.*^(b)]

5062. *Release from marriage contract.*

SEC. 62. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. [*Amendment, approved March 30, 1874; Amendments 1873-4, 185; took effect July 1, 1874.*^(c)]

(a) Original section:

SEC. 58. If either party to a marriage is incapable of consent, for want of age or understanding; or, from physical causes, of entering into the marriage state; or if such consent is obtained by fraud or force, the marriage is voidable.

(b) The original section differed in the second sub-

division, which, after the words "preceding such subsequent marriage," reads as follows: "in which case the subsequent marriage is void only from the time its nullity is adjudged by a competent tribunal."

(c) The original section did not have the words "unless both parties participate therein."

5063. *Marriages contracted without the state.*

SEC. 63. All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, are valid in this state.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

5068. *Marriage, how solemnized.*

SEC. 68. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage.

5069. *Marriage license, requisites of.*

SEC. 69. All persons about to be joined in marriage must first obtain a license therefor from the clerk of the county court of the county in which the marriage is to be celebrated, showing:

1. The identity of the parties;
2. Their real and full names and places of residence;
3. Their ages;
4. If the male be under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given; or that such non-aged person has been previously, but is not at the time, married. For the purpose of ascertaining these facts, the clerk is authorized to examine parties and witnesses on oath, and to receive affidavits, and he must state such facts in the license. If the male be under the age of twenty-one years, or the female be under the age of eighteen, and such person has not been previously married, no license shall be issued by the clerk, unless the consent in writing of the parents of the person under age, or of one of such parents, or of his or her guardian, or of one having charge of such person, be presented to him; and such consent shall be filed by the clerk. [*Amendment, approved March 30, 1874; Amendments 1873-4, 185; took effect July 1, 1874.*^(a)]

5070. *By whom solemnized.*

SEC. 70. Marriage may be solemnized by either a justice of the supreme court, district or county judge, justice of the peace, mayor, priest, or minister of the gospel of any denomination.

5071. *No particular form of solemnization.*

SEC. 71. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

5072. *Requisites on solemnization of marriage.*

SEC. 72. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license. [*Amendment, approved March 30, 1874; Amendments 1873-4, 186; took effect July 1, 1874.*^(b)]

(a) The original section had the following third subdivision: "3. That they are of sufficient age to be capable of contracting marriage."

In the fourth subdivision it did not have the words "or of one having the charge of such person," nor the last sentence commencing with the words, "If the male be under the age of twenty-one years."

(b) Original section:

SEC. 72. The person solemnizing a marriage must

first require the presentation of the marriage license, and satisfy himself that it substantially conforms to section 69, and that the facts set forth in it are true. For this purpose he may rely upon the license or may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license.

5073. Certificate of marriage.

SEC. 73. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate, showing:

1. The fact, time, and place of solemnization; and
2. The names and places of residence of one or more witnesses to the ceremony. [*Amendment, approved March 30, 1874; Amendments 1873-4, 187; took effect July 1, 1874.*^(a)]

5074. Certificate to parties and recorder.

SEC. 74. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage.

5075. Declaration of marriage, how made.

SEC. 75. Persons married without the solemnization provided for in section 70 must jointly make a declaration of marriage, substantially showing:

1. The names, ages, and residence of the parties;
2. The fact of marriage;
3. The time of marriage;
4. That the marriage has not been solemnized.

5076. Declaration of marriage, what to contain.

SEC. 76. If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residences of the parties;
2. The fact of marriage;
3. That no record of such marriage is known to exist. Such declaration must be subscribed by the parties and attested by at least three witnesses. [*Amendment, approved March 30, 1874; Amendments 1873-4, 187; took effect July 1, 1874.*^(b)]

5077. To be acknowledged and recorded.

SEC. 77. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

5078. Action between the parties to determine validity.

SEC. 78. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the district court, to have it declared.

§ 79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made. [In effect, February 6, 1878.]

MARRIAGES.

[This article, as an entirety, was added to the Civil Code by act of March 15, 1876; Amendments 1875-6, 69; took effect from passage.]

5080. Judicial declaration of incestuous or void marriage.

SEC. 80. Either party to an incestuous or void marriage may proceed by action in the district court to have the same so declared. [*New section, approved March 15, 1876; Amendments 1875-6, 69; took effect from passage.*]

(a) The original section had three subdivisions, the third and second like the first and second of the amendment, and the first as follows: "1. That he believes the facts stated to be true, and that upon due inquiry there appears to be no legal impediment to the marriage."

(b) The original section did not have the words "heretofore contracted," nor the last sentence commencing with the words, "Such declaration must be subscribed."

CHAPTER II.

DIVORCE.

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ARTICLE I.

NULLITY.

5082. *Grounds for annulment of marriage.*

SEC. 82. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable. [*Amendment, approved March 30, 1874; Amendments 1873-4, 187; took effect July 1, 1874.*^(a)]

5083. *Action for nullity, when and by whom commenced.*

SEC. 83. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one: by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent;

2. For causes mentioned in subdivision two: by either party during the life of the other, or by such former husband or wife;

3. For causes mentioned in subdivision three: by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subdivision four: by the party injured, within four years after the discovery of the facts constituting the fraud;

5. For causes mentioned in subdivision five: by the injured party, within four years after the marriage;

(a) The original section differed in the first subdivision, which was as follows: "1. That the party seeking to have the marriage annulled was under the

age of legal consent; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife."

6. For causes mentioned in subdivision six: by the injured party, within four years after the marriage. [*Amendment, approved March 30, 1874; Amendments 1873-4, 188; took effect July 1, 1874.*^(a)]

5084. *Children of annulled marriage.*

SEC. 84. Where a marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

5085. *Custody of children.*

SEC. 85. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

5086. *Effect of judgment of nullity.*

SEC. 86. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

5090. *Marriage, how dissolved.*

SEC. 90. Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. [*Amendment, approved March 30, 1874; Amendments 1873-4, 189; took effect July 1, 1874.*^(b)]

5091. *Divorce, effect of judgment.*

SEC. 91. The effect of a judgment decreeing a divorce, is to restore the parties to the state of unmarried persons. [*Amendment, approved March 30, 1874; Amendments 1873-4, 189; took effect July 1, 1874.*^(c)]

5092. *Grounds of action for divorce.*

SEC. 92. Divorces may be granted for any of the following causes:

1. Adultery;
2. Extreme cruelty;
3. Willful desertion;
4. Willful neglect;
5. Habitual intemperance;
6. Conviction of felony. [*Amendment, approved March 30, 1874; Amendments 1873-4, 189; took effect July 1, 1874.*^(d)]

5093. *Adultery defined.*

SEC. 93. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

5094. *Extreme cruelty, what.*

SEC. 94. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

(a) The original section differed in the first subdivision, which was as follows: "1. For causes mentioned in subdivision 1: by either party to the marriage, or by a guardian or relative, within four years after arriving at the age of consent."

(b) Original section:
SEC. 90. Marriage may be dissolved: 1. By the death of either of the parties; or, 2. By a divorce adjudged by a court of competent jurisdiction.

(c) Original section:
SEC. 91. Divorce is a judgment dissolving the marriage and restoring the parties to the status of unmarried persons.

(d) The original section instead of "may" used the word "must."

5095. *Desertion, what.*

SEC. 95. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

5096. *Desertion, how manifested.*

SEC. 96. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

5097. *In case of stratagem or fraud, who commits desertion.*

SEC. 97. When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

5098. *In case of cruelty, where one party leaves the other, who commits desertion.*

SEC. 98. Departure or absence of one party from the family dwelling-place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

5099. *Separation by consent not desertion.*

SEC. 99. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

5100. *Separation, when becomes desertion.*

SEC. 100. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 189; took effect July 1, 1874.*^(a)]

5101. *Consent to separate revocable.*

SEC. 101. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

5102. *Desertion, how cured.*

SEC. 102. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal. [*Amendment, approved March 30, 1874; Amendments 1873-4, 190; took effect July 1, 1874.*^(b)]

5103. *Wife must abide by husband's selection of home, or it is desertion on her part.*

SEC. 103. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

5104. *If the place is unfit, and wife refuses to conform, it is desertion by the husband.*

SEC. 104. If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

(a) Original section:

SEC. 100. The separation and intent to desert are not always coincident. Temporary absence or separation, proper in itself, may be converted into desertion whenever the intent to desert is fixed during such absence or separation.

(b) The original section instead, of "a cause of divorce," had the words "complete, truly repents," and instead of "the refusal shall be deemed and treated as," it had the words "it is."

5105. Willful neglect, what.

SEC. 105. Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

5106. Habitual intemperance, what.

SEC. 106. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon an innocent party.

5107. Habitual intemperance for one year.

SEC. 107. Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE III.**CAUSES FOR DENYING DIVORCE.****5111. Divorces denied, on showing what.**

SEC. 111. Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

5112. Connivance, what.

SEC. 112. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

5113. Corrupt consent, how manifested.

SEC. 113. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

5114. Collusion, what.

SEC. 114. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

5115. Condonation, what.

SEC. 115. Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

5116. Requisites to condonation.

SEC. 116. The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party;
3. Restoration of the offending party to all marital rights.

5117. Condonation implies what.

SEC. 117. Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

5118. Evidence of condonation.

SEC. 118. Where the cause of divorce consists of a course of offensive conduct, or arises in case of cruelty, from successive acts of ill-treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts con-

stituting such cause, unless accompanied by an express agreement to condone. [*Amendment, approved March 30, 1874; Amendments 1873-4, 190; took effect July 1, 1874.*^(a)

5119. *Condonation, when can be made.*

SEC. 119. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. [*Amendment, approved March 30, 1874; Amendments 1873-4, 190; took effect July 1, 1874.*^(b)

5120. *Concealment of facts in certain cases makes condonation void.*

SEC. 120. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

5121. *Condonation, how revoked.*

SEC. 121. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

5122. *Recrimination, what.*

SEC. 122. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

5123. *Condonation as a recriminatory defense.*

SEC. 123. Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown. [*Amendment, approved March 30, 1874; Amendments 1873-4, 190; took effect July 1, 1874.*^(c)

5124. *Limitation of action for divorce.*

SEC. 124. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,
2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence;
3. In all other cases when there is an unreasonable lapse of time before the commencement of the action. [*Amendment, approved March 30, 1874; Amendments 1873-4, 191; took effect July 1, 1874.*^(d)

(a) Original section:

SEC. 118. Where the cause of divorce consists of a course of offensive conduct covering the prescribed statutory period, or arising, in case of cruelty, from successive acts of ill treatment which may, aggregate, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any part of the facts or period constituting such cause, unless accompanied by an express agreement to condone.

(b) Original section:

SEC. 119. In cases mentioned in the last section, only after the cause of divorce has become complete, as to the acts complained of and the period of their continuance, can condonation be made. Even then, further efforts to live with and reform the offending party must not, unsupported by an express agreement of condona-

tion made without undue influence, be construed as evidence of condonation.

(c) Original section:

SEC. 123. Condonation of a cause of divorce shown in the answer as a recriminatory defense is a bar to such defense when the condonee has fully performed the marital duties, and is without reproach since the condonation, or if three years or more have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

(d) The original section in the first subdivision instead of "two" had the word "five," and in the second subdivision instead of "two years" had "one year." In the third subdivision it had, after "time," the words "after the commission of the offense."

5125. *Lapse of time establishes certain presumptions.*

SEC. 125. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of such offense.

5126. *Presumptions may be rebutted.*

SEC. 126. The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

5127. *Limitation of time.*

SEC. 127. There are no limitations of time for commencing actions for divorce, except such as are contained in section 124.

5128. *Divorces granted, when.*

SEC. 128. A divorce must not be granted unless the plaintiff has been a resident of the state for six months next preceding the commencement of the action.

5129. *Proof of actual residence required—Presumptions do not apply.*

SEC. 129. In actions for divorce the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

5130. *Divorce not granted by default, etc.*

SEC. 130. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers. [*Amendment, approved March 30, 1874; Amendments 1873-4, 191; took effect July 1, 1874.*^(a)]

ARTICLE IV.

GENERAL PROVISIONS.

5136. *Relief in some cases, where separation denied.*

SEC. 136. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

5137. *Expense of action.*

SEC. 137. While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

§ 137. Add, "When the husband willfully deserts the wife, she may, without applying for a divorce, maintain in the District Court an action against him for permanent support and maintenance of herself or of herself and children, during the pendency of such action the Court may in its discretion require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance. The final judgment in such action may be enforced by the Court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the Court." [In effect, March 20, 1878.]

any, before or after judgment, location of the children of the d may at any time vacate or

separation granted to wife.

Expense of the husband, the court of the children of the marriage,

SEC. 130. No divorce must be granted upon the default of the defendant, or upon the statement, admission, or uncorroborated testimony of the parties, or

upon any statement or finding of fact made by a referee, but the court must require proof of the facts alleged, which proof, if taken before a referee, must be upon written questions and answers.

and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

5140. *Security for maintenance and alimony.*

SEC. 140. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

5141. *Court shall resort to what, in executing certain sections.*

SEC. 141. In executing the five preceding sections the court must resort:

1. To the community property; then,
2. To the separate property of the husband.

5142. *If wife has sufficient for her support, court may withhold allowance.*

SEC. 142. When the wife has either a separate estate, or there is community property sufficient to give her alimony or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

5143. *Community and separate property may be subjected to support and educate children.*

SEC. 143. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

5144. *Legitimacy of issue.*

SEC. 144. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

5145. *Same.*

SEC. 145. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

5146. *Community property and homestead, how disposed of on divorce.*

SEC. 146. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property, and the homestead, shall be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely, or for a limited period, subject in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of

the court to assign it for a limited period to the innocent party. [*Amendment, approved March 30, 1874; Amendments 1873-4, 191; took effect July 1, 1874.*^(a)

5147. Order of court for disposition of property.

SEC. 147. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds. [*Amendment, approved March 30, 1874; Amendments 1873-4, 192; took effect July 1, 1874.*^(b)

5148. Order subject to revision on appeal.

SEC. 148. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. [*Amendment, approved March 30, 1874; Amendments 1873-4, 192; took effect July 1, 1874.*^(c)

CHAPTER III.

HUSBAND AND WIFE.

5155. Mutual obligations of husband and wife.

SEC. 155. Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

5156. Rights of husband, as head of family.

SEC. 156. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

5157. In other respects their interests separate.

SEC. 157. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

5158. Husband and wife may make contracts.

SEC. 158. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

5159. How far may impair their legal obligations.

SEC. 159. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 193; took effect July 1, 1874.*^(d)

5160. Consideration for agreement of separation.

SEC. 160. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

5161. May be joint tenants, etc.

SEC. 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

(a) Original section:

SEC. 147. In case of the dissolution of the marriage by decree of any court of competent jurisdiction, the community property must be equally divided between the parties, and the court granting the decree must make such order for the division of the community property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require.

(b) Original section:

SEC. 148. When the decree of divorce is rendered on

the ground of adultery or extreme cruelty, the party in fault is only entitled to such portion of the community property as the court granting the decree may, in its discretion, from the facts of the case, deem just.

(c) Original section:

SEC. 148. The order for the disposition of the community property, under the preceding section, is subject to revision on appeal in all respects, including the exercise of discretion by the court below.

(d) The original section did have the words "in writing."

5162. *Separate property of the wife.*

SEC. 162. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

5163. *Separate property of the husband.*

SEC. 163. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

5164. *Community property.*

SEC. 164. All other property acquired after marriage, by either husband or wife, or both, is community property.

5165. *Inventory of separate property of wife.*

SEC. 165. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

5166. *Filing inventory notice of wife's title and prima facie evidence.*

SEC. 166. The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the wife. [*Amendment, approved March 30, 1874; Amendments 1873-4, 193; took effect July 1, 1874.*^(a)]

5167. *Community property, when not liable for contracts of wife.*

SEC. 167. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband. [*Amendment, approved March 30, 1874; Amendments 1873-4, 193; took effect July 1, 1874.*^(b)]

5168. *Earnings of wife not liable for debts of husband.*

SEC. 168. The earnings of the wife are not liable for the debts of the husband.

5169. *Earnings of wife, when living separate, separate property.*

SEC. 169. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

5170. *Liability for debts of wife contracted before marriage.*

SEC. 170. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

5171. *Wife's property not liable for debts of husband, but liable for her own debts.*

SEC. 171. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

5172. *Power of husband over community property.*

SEC. 172. The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate.

5173. *Courtesy and dower not allowed.*

SEC. 173. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

(a) The original had the word "primary" instead of "prima facie."

(b) Original section:
SEC. 167. A wife cannot make a contract for the payment of money.

5174. *Husband liable for support of wife.*

SEC. 174. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. [*Amendment, approved March 30, 1874; Amendments 1873-4, 193; took effect July 1, 1874.*^(a)]

5175. *When not liable.*

SEC. 175. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement. [*Amendment, approved March 30, 1874; Amendments 1873-4, 193; took effect July 1, 1874.*^(b)]

5176. *When wife must support husband.*

SEC. 176. The wife must support her husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself. [*Amendment, approved March 30, 1874; Amendments 1873-4, 194; took effect July 1, 1874.*^(c)]

5177. *Rights of husband governed by what.*

SEC. 177. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

5178. *Marriage settlement contracts, how executed.*

SEC. 178. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

5179. *To be acknowledged and recorded.*

SEC. 179. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

5180. *Effect of recording.*

SEC. 180. The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

5181. *Minors may make marriage settlements.*

SEC. 181. A minor capable of contracting marriage may make a valid marriage settlement.

TITLE II.

Parent and Child.

CHAPTER I. BY BIRTH.....	5193
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CHAPTER I.

CHILDREN BY BIRTH.

5193. *Legitimacy of children born in wedlock.*

SEC. 193. All children born in wedlock are presumed to be legitimate.

^(a) The original section did not have the words, "except in the cases mentioned in the next section."

^(b) The original section did not have the last clause commencing with the words "nor is he liable."

^(c) The original section did not have the words

"when he has not deserted her." Instead of "there is" it had the word "they," and instead of "he is unable, from infirmity," it had "he from infirmity is not able or competent."

5194. Legitimacy of children born after dissolution of marriage.

SEC. 194. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. [*Amendment, approved March 30, 1874; Amendments 1873-4, 194; took effect July 1, 1874.*^(a)]

5195. Who may dispute legitimacy of child.

SEC. 195. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

5196. Obligation of parents for support and education of children.

SEC. 196. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

5197. Custody of legitimate child.

SEC. 197. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto. [*Amendment, approved March 30, 1874; Amendments 1873-4, 194; took effect July 1, 1874.*^(b)]

5198. Husband and wife living separate, neither to have superior right to custody of children.

SEC. 198. The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

5199. When husband or wife may bring action for exclusive control of children.

SEC. 199. Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

5200. Custody of an illegitimate child.

SEC. 200. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

5201. Allowance to parent.

SEC. 201. The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

5202. Parent cannot control property of child.

SEC. 202. The parent, as such, has no control over the property of the child.

(a) Original section:

SEC. 194. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate. But if during such period she marries again, and afterwards has a child, it is presumed to be her legitimate offspring by the second husband.

(b) The original section, instead of "unless she has deserted him, or is living separate from him by agreement," had the words "if she is living and capable of consent."

5203. *Remedy for parental abuse.*

SEC. 203. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

5204. *When parental authority ceases.*

SEC. 204. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;
2. Upon the marriage of a child; or,
3. Upon its attaining majority.

5205. *Remedy when parent dies without providing for support of child.*

SEC. 205. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

5206. *Reciprocal duties of parents and children in maintaining each other.*

SEC. 206. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding.

5207. *When parent is liable for necessities supplied to child.*

SEC. 207. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

5208. *When parent not liable for support furnished child.*

SEC. 208. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

5209. *Husband not bound for support of wife's children by former marriage.*

SEC. 209. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

5210. *Compensation and support of adult child.*

SEC. 210. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

5211. *Parent may relinquish services and custody of child.*

SEC. 211. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

5212. *Wages of minors.*

SEC. 212. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages. [*Amendment, approved March 30, 1874; Amendments 1873-4, 194; took effect July 1, 1874.*^(a)]

(a) The original section, in the place of "until," had the words "unless, within thirty days after the commencement of the service."

5213. *Right of parent to determine residence of child.*

SEC. 213. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

5214. *Wife in certain cases may obtain custody of minor children.*

SEC. 214. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section 246.

5215. *Child legitimized by marriage of parents.*

SEC. 215. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. [*New section, approved March 30, 1874; Amendments 1873-4, 195; took effect July 1, 1874.*]

CHAPTER II.

ADOPTION.

5221. *Child may be adopted.*

SEC. 221. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

5222. *Who may adopt.*

SEC. 222. The person adopting a child must be at least ten years older than the person adopted. [*Amendment, approved March 30, 1874; Amendments 1873-4, 195; took effect July 1, 1874.*^(a)]

5223. *Consent necessary.*

SEC. 223. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent. [*Amendment, approved March 30, 1874; Amendments 1873-4, 195; took effect July 1, 1874.*^(b)]

5224. *Consent of child's parents.*

SEC. 224. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or of cruelty, and for either cause divorced, or adjudged to be a habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect.

5225. *Consent of child.*

SEC. 225. The consent of a child, if over the age of twelve years, is necessary to its adoption.

5226. *Proceedings on adoption.*

SEC. 226. The person adopting a child, and the child adopted, and the other persons, if within or residents of this state, whose consent is necessary, must appear before the county judge of the county where the person adopting resides; and the necessary consent must thereupon be signed and an agreement be executed by the person adopting, to the effect that the child shall be adopted and

(a) Original section:

SEC. 222. The person adopting a child must be at least fifteen years older than the person adopted, and must have been married, and if a woman, must be a widow, or be lawfully divorced from her husband without her fault.

(b) The original section did not have the last clause commencing with the words "nor can a married woman."

treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this state, then their written consent, duly proved or acknowledged according to sections 1182 and 1183 of this code, shall be filed in said county court at the time of the application for adoption. [*Amendment, approved February 9, 1876; Amendments 1875-6, 69; took effect immediately.*^(a)

5227. *Judge's order.*

SEC. 227. The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

5228. *Effect of adoption—Rights and duties.*

SEC. 228. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 195; took effect July 1, 1874.*^(b)

5229. *Effect on former relations of child.*

SEC. 229. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

5230. *Adoption of illegitimate child.*

SEC. 230. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

TITLE III.

Guardian and Ward.

5236. *Guardian, what.*

SEC. 236. A guardian is a person appointed to take care of the person or property of another.

5237. *Ward, what.*

SEC. 237. The person over whom or over whose property a guardian is appointed, is called his ward.

5238. *Kinds of guardians.*

SEC. 238. Guardians are either:

1. General; or,
2. Special.

(a) Original section:

SEC. 226. The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the county judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that

the child shall be adopted, and treated in all respects as his own lawful child should be treated.

(b) The original section, instead of "may take the family name of the person adopting. After adoption the two shall," had the words "takes the name of the person adopting, and the two thenceforth."

5239. *General guardian, what.*

SEC. 239. A general guardian is a guardian of the person or of all the property of the ward within this state, or of both.

5240. *Special guardian, what.*

SEC. 240. Every other is a special guardian.

5241. *Appointment of guardian by will or by deed.*

SEC. 241. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent;

2. If the child be illegitimate, by the mother. [*Amendment, approved March 30, 1874; Amendments 1873-4, 195; took effect July 1, 1874.*^(a)]

5242. *No person guardian of estate without appointment.*

SEC. 242. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

5243. *Appointment by court.*

SEC. 243. A guardian of the person or property, or both, of a person residing in this state, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section two hundred and forty-one, by the probate court, as provided in the Code of Civil Procedure. [*Amendment, approved March 30, 1874; Amendments 1873-4, 196; took effect July 1, 1874.*^(b)]

5244. *Same.*

SEC. 244. A guardian of the property within this state of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

5245. *Jurisdiction.*

SEC. 245. In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

5246. *Rules for awarding custody of minor.*

SEC. 246. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor and business, then to the father.

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent;
2. To one who was indicated by the wishes of a deceased parent;
3. To one who already stands in the position of a trustee of a fund to be applied to the child's support;

4. To a relative. [*Amendment, approved March 30, 1874; Amendments 1873-4, 196; took effect July 1, 1874.*^(c)]

(a) The original section did not have the words "or estate, or of both."

(b) The original section did not have the words "other than those named in section two hundred and forty-one."

(c) The original section, under the third subdivision had, "2. To a relative;" "3" instead of "2;" "4" instead of "3," and in addition had "5. To one of good moral character."

5247. Powers of guardian appointed by court.

SEC. 247. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

5248. Duties of guardian of the person.

SEC. 248. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place within the state, but not elsewhere, without permission of the court.

5249. Duties of guardian of estate.

SEC. 249. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in the power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward, at the close of his guardianship, in as good condition as he received it. [*Amendment, approved March 30, 1874; Amendments 1873-4, 197; took effect July 1, 1874.*^(a)]

5250. Relation confidential.

SEC. 250. The relation of guardian and ward is confidential, and is subject to the provisions of the title on trust.

5251. Guardian under direction of court.

SEC. 251. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

5252. Death of a joint guardian.

SEC. 252. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

5253. Removal of guardian.

SEC. 253. A guardian may be removed by the probate court for any of the following causes:

1. For abuse of his trust;
2. For continued failure to perform its duties;
3. For incapacity to perform its duties;
4. For gross immorality;
5. For having an interest adverse to the faithful performance of his duties;
6. For removal from the state;
7. In the case of a guardian of the property, for insolvency; or,
8. When it is no longer proper that the ward should be under guardianship.

5254. Guardian appointed by parent, how superseded.

SEC. 254. The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section 253;
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

5255. Guardian appointed by court, how suspended.

SEC. 255. The power of a guardian appointed by a court is suspended only:

1. By order of the court; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,

(a) Original section:

SEC. 249. A guardian of the property must keep safely the property of his ward. He must not suffer any sale, waste, or destruction of the real property, but must maintain the inheritance, its buildings and appurte-

nances, out of the moneys of the estate, and deliver the same to the ward, at the close of his guardianship, in as good condition as he received them, inevitable decay and injury only excepted.

3. The guardianship over the person of the ward, by the marriage of the ward. [*Amendment, approved March 30, 1874; Amendments 1873-4, 197; took effect July 1, 1874.*^(a)]

5256. *Release by ward.*

SEC. 256. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

5257. *Guardian's discharge.*

SEC. 257. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

5258. *Insane persons.*

SEC. 258. A person of unsound mind may be placed in an asylum for such persons, upon the order of the county judge of the county in which he resides, as follows:

1. The judge must be satisfied, by the oath of two reputable physicians, that such person is of unsound mind, and unfit to be at large;

2. Before granting the order the judge must examine the person himself, or if that is impracticable, cause him to be examined by an impartial person;

3. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may demand an investigation before a jury, which must be conducted in all respects as under an inquiry of lunacy.

TITLE IV.

Master and Servant.

5264. *Minors may apprentice themselves.*

SEC. 264. Every minor, with the consent of the persons or officers herein-after mentioned, may, of his own free will, bind himself, in writing, to serve as clerk, apprentice, or servant, in any profession, trade, or employment, during his minority; and such binding shall be as valid and effectual as if such minor was of full age at the time of making the engagement.

5265. *Consent of parents, etc., requisite.*

SEC. 265. Such consent shall be given:

1. By the father of the minor. If he be dead, or be not of legal capacity to give his consent, or if he shall have abandoned or neglected to provide for his family, and such fact be certified by a justice of the peace of the township or county, or sworn to by a credible witness, and such certificate or affidavit be indorsed on the indenture, then:

2. By the mother. If the mother be dead, or be not of legal capacity to give such consent or refusal, then:

3. By the guardian of such infant. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian, then:

4. By the supervisors of the county, or any two justices of the peace, or the judge of the probate court of the county;

5. If such minor be an orphan, under the care and control of any orphan asylum in this state, then by the board of managers thereof.

5266. *Written consent.*

SEC. 266. Such consent shall be signified in writing by the person entitled to give the same, by certificate at the end of, or indorsed upon the indentures.

(a) The original section, instead of "suspended," had the word "superseded." It did not have the third subdivision.

5267. *Executors may bind.*

SEC. 267. The executors of any last will of a parent, who shall be directed in such will to bring up his or her child to some trade or calling, may bind such child to service as a clerk, or apprentice, in like manner as the father might have done if living. If there is a surviving mother, her consent also is necessary.

5268. *Supervisors may bind out.*

SEC. 268. The supervisors of the county may bind out minors who are or shall become chargeable to such county, to be clerks, apprentices, or servants, which binding shall be as effectual as if such minors had bound themselves with the consent of their father.

5269. *Town officers.*

SEC. 269. In every town or city the presiding officer of the first council or legislative board thereof, if there be more than one, or any public officer or officers appointed to provide for the poor, may in like manner bind out any child who, or whose parents are, chargeable to any such town or city.

5270. *Age of apprentice to be inserted in indentures.*

SEC. 270. The age of every infant so bound shall be inserted in the indentures, and shall be taken to be the true age; and whenever public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully of the infant's age.

5271. *Indentures, conditions in.*

SEC. 271. Every sum of money paid or agreed for, with or in relation to the binding out of any clerk, apprentice, or servant, shall be inserted in the indentures.

5272. *Same.*

SEC. 272. The indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture.

5273. *Deposit of indentures.*

SEC. 273. The counterpart of any indenture executed by any county, or city, or town officers, must be by them deposited in the office of the clerk of the county court.

5274. *Alien minors.*

SEC. 274. Any minor, capable of becoming a citizen of this state, coming from any other country, state, or territory, may bind himself to service until his majority, or for any shorter term. Such contract, if made for the purpose of raising money to pay his passage, or for the payment of such passage, may be for the term of one year, although such term may extend beyond the time when such person will be of full age, but it shall in no case be for a longer term.

5275. *Contract under preceding section to be acknowledged.*

SEC. 275. No contract made under the preceding section shall bind the servant, unless duly acknowledged by the minor, before some public magistrate or other officer authorized to administer oaths, nor unless a certificate, showing that the same was made freely, on private examination, be indorsed upon the contract.

5276. *Causes for annulling indentures.*

SEC. 276. Such indentures of apprenticeship may be annulled for:

1. Fraud in the contract of indenture;
2. When such contract is not made or executed in accordance with the provisions of this title;
3. For willful non-fulfillment, by such master, of the provisions of such indenture;
4. Cruelty or maltreatment of such apprentice by the master. In such case, the apprentice may recover for his services.

An Act relative to apprentices and masters.

Approved April 3, 1876; 1875-6, 842.

Minors may be apprenticed.

SECTION 1. All minors, at the age of fourteen years, may be bound by covenant or indenture, in conformity with the stipulations herein specified, to any mechanical trade or art, or the occupation of farming, as apprentices; males to the age of twenty-one years, and females to the age of eighteen.

By whom.

SEC. 2. Minors, at or above the age of fourteen years, may be bound by the father, or, in case of his death, incompetency, or where he shall have willfully abandoned his family for one year without making suitable provision for their support, or has become an habitual drunkard, vagrant, etc., then by their mother, or by their legal guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves, with the approbation of the county court of the county where they reside; but the power of a mother to bind her children, whether legitimate or illegitimate, shall cease upon her subsequent marriage, and shall not be exercised by herself or her husband, at any time during her marriage, without the approval of the county court of the county wherein she or he resides.

Consent of minor necessary.

SEC. 3. In all cases the consent of the minor, personally, is required as a party to the covenant, and should be so expressed in the indenture, and testified by his or her signing the same.

Indentures.

SEC. 4. Indentures shall be signed, sealed, and delivered in duplicate copies, in the presence of all the parties concerned; and when made with the approbation of the county court, or the judge thereof in vacation, such approbation shall be certified in writing, indorsed upon each copy of the indenture. One copy of the indenture shall be kept for the use of the minor by his parent or guardian (when executed by them respectively); but when made with the approbation of the county court, it shall be deposited in the safe-keeping of the clerk of said court, for the use of the minor. The other copy shall be held by the master, and delivered up by him to the apprentice at the expiration of his term of service.

Same.

SEC. 5. No indenture of apprentice, made in pursuance of this act, shall bind the minor after the death of his master, but the apprenticeship shall be thenceforth discharged, and the minor may be bound out anew.

Same.

SEC. 6. Facts of incapacity, desertion, drunkenness, vagrancy, etc., shall be decided in the county court by a jury before the indenture shall take effect, and an indorsement on the indenture, under seal of the court, that the charge or charges are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge or charges to be true, the

person at whose instance such proceedings may have been had shall pay all costs attending the same.

Executor may bind.

SEC. 7. The executor, who by the will of a father is directed to bring up his child to a trade or calling, shall have power to bind such by indenture in like manner as the father, if living, might have done.

County court may bind.

SEC. 8. When any minor who is poor, homeless, chargeable to the county, or an outcast, has no visible means of obtaining an honest livelihood, it shall be lawful for the county court to bind such apprentice until, if a male, he arrives at the age of twenty-one; and if a female, to the age of eighteen.

Obligations of masters.

SEC. 9. It shall be unlawful for any master to remove an apprentice out of this state; and in all indentures by the county court for binding out any orphan or homeless minor as an apprentice, there shall be inserted, among other covenants, a clause to the following effect: That the master to whom such minor shall be bound, shall cause the same to be taught to read and write, and the ground rules of arithmetic, the compound rules, and the ratio and proportion, and shall give him requisite instruction in the different branches of his trade or calling; and at the expiration of his term of service shall give him two full new suits of clothes, and the sum of fifty dollars, gold; and if a female, she shall receive two fine new suits of clothes, and the sum of fifty dollars, gold; the two new suits, in either case, to be worth at least sixty dollars, gold.

Money considerations and clothes the property of apprentice.

SEC. 10. All considerations of money or clothes paid or allowed by the master, in conformity with the foregoing section, are the sole property of the apprentice, and to whom the master is accountable for the same, and he shall pay or donate into the hand of the apprentice alone.

Treatment of apprentices.

SEC. 11. Parents and guardians and the county court shall, from time to time, inquire into the treatment of the children bound by them, respectively, or with their approbation; and the judges of the county court shall be responsible for the charge of indentured apprentices bound by the approbation of their predecessors in office, and defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters.

Age to be stated.

SEC. 12. The age of every apprentice shall be inserted in the indenture; and all indentures entered into otherwise than as is herein provided, shall be, as to all apprentices under age, utterly void.

County court to hear complaints.

SEC. 13. The county court shall hear the complaints of apprentices who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the state, or any violation of the indenture of apprenticeship; and the court may hear and determine such cases, and make such order therein as will relieve the party injured in future.

Court may discharge apprentice.

SEC. 14. The county court shall have power, where circumstances require it, to discharge an apprentice from his apprenticeship, and in case any money or other thing has been paid, or contracted to be paid by either party, in relation to such apprenticeship, the court shall make such order concerning the same as

shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the county court, it shall be the duty of the court, if found necessary, again to bind such apprentice, if under age.

Liability of master.

SEC. 15. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and shall be applied and appropriated to his use by the person who shall recover the same, and shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If such action is not brought during the minority of such apprentice, it may be commenced in his own name at any time within six months after coming of age, but not later than two years.

Action against apprentice for neglect, misdemeanor, etc.

SEC. 16. An apprentice who shall be guilty of any gross misbehavior, or refusal to do his duty, or willful neglect thereof, shall render himself liable to the complaint of the master in the county court of the county wherein he resides, which complaint shall set forth the circumstances of the case; and to said complaint shall be attached a citation, signed by the clerk in said court, requiring the apprentice and all persons who have covenanted in his behalf, to appear and answer to such complaint, which complaint and citation shall be served on them in the usual manner of serving civil process.

Court may dissolve apprenticeship.

SEC. 17. The court shall proceed to hear and determine the cause, and after a full hearing of the parties, or if the adverse party shall neglect to appear after due notice, the court may render judgment or decree that the master be discharged from the contract of apprenticeship, and for the costs of suit; such costs to be recovered of the parent or guardian of the minor, if there be any who signed the indenture, and execution therefor issued accordingly; and if there be no parent or guardian liable for such costs, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he shall arrive at full age.

Liability of parties to indenture.

SEC. 18. The parties to an indenture shall also be liable to the master in an action on the indenture, for the breach of any covenant on their part therein contained, committed before the master was so discharged from such indenture.

Misdemeanor.

SEC. 19. It shall be unlawful for any person to entice, counsel, or persuade to run away any apprentice, or employ, harbor, or conceal such, knowing said apprentice to be a runaway; and the parties so offending shall be guilty of a misdemeanor, and be subject to fine of not less than fifty and not more than one hundred dollars, to be recovered by the master in any court having jurisdiction thereof.

When master removes from this state.

SEC. 20. Whenever any master of an apprentice shall wish to remove out of this state, or to quit his trade or business, he shall appear with his apprentice before the county court of the proper county, and if the court be satisfied that the master has done justice to the said apprentice, for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

SEC. 21. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 22. This act shall take effect and be in force from and after its passage.

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CHAPTER I.

FORMATION OF CORPORATIONS.

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ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

5283. *Corporation defined.*

SEC. 283. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

5284. *Corporations, public and private distinguished.*

SEC. 284. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private. [*Amendment, approved March 30, 1874; Amendments 1873-4, 197; took effect July 1, 1874.*^(a)]

(a) The original section, instead of "all other corporations are private," had the words "private corporations are formed for the purpose of religion, benevolence, education, art, literature or profit."

5285. Private corporations, how formed.

SEC. 285. Private corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed in this article. A majority of such persons must be residents of this state. [*Amendment, approved March 30, 1874; Amendments 1873-4, 197; took effect July 1, 1874.*^(a)]

5286. Corporations may be formed for any lawful purpose.

SEC. 286. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. [*Amendment, approved March 30, 1874; Amendments 1873-4, 198; took effect July 1, 1874.*^(b)]

5287. Continuance of existence under provisions of code.

SEC. 287. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence, under the provisions of this code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all of its directors, or such election may be made at any annual meeting of the stockholders or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby. [*Amendment, approved March 30, 1874; Amendments 1873-4, 198; took effect July 1, 1874.*^(c)]

5288. Existing corporations not affected.

SEC. 288. No corporation formed or existing before twelve o'clock, noon, of the day upon which this code takes effect, is affected by the provisions of Part IV of Division First of this code, unless such corporation elects to continue its existence under it as provided in section 287; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

(a) The original section after "five or more persons" had the words "for the purposes and." It had an additional clause at the end as follows:

"Married women may become corporators, officers and members of religious, benevolent, art, literary or educational corporations."

(b) The original section provided that private corporations might be formed for certain specified purposes and none other. It designated such purposes in twenty-seven subdivisions. They are here omitted on account of their length.

(c) Original section:

SEC. 287. Any existing corporation formed under any law of this state, for any purpose designated in any subdivision of the preceding section, may, at a meeting of its members or stockholders, called for that purpose, continue its existence, under Title I of this part, or under the provisions of any subsequent title particularly applicable thereto, as follows:

1. Public notice of such meeting, and of its object, must be given by publishing the same in a daily news-

paper for two weeks, or a weekly newspaper for four weeks, successively, published in the county where the principal place of business of the corporation is. In lieu of the publication, personal notice may be given to each member or stockholder thereof;

2. Two thirds of the members, if there is no capital stock, and if there is a capital stock, then stockholders representing two thirds of it, must vote in favor of such continuance;

3. A copy of the proceedings of this meeting, giving the names of all persons present, the votes taken, the notice calling the meeting, and the proof of its publication or service, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are on file. Thereafter such corporation is possessed of all the rights and powers, and subject to all the obligations, restrictions, and limitations provided in this part applicable thereto, and its corporate existence is continued.

5289. *Name of instrument creating corporation.*

SEC. 289. The instrument by which a private corporation is formed is called "articles of incorporation."

5290. *Articles of incorporation, what to contain.*

SEC. 290. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The place where its principal business is to be transacted;
4. The term for which it is to exist, not exceeding fifty years;
5. The number of its directors or trustees, and the names and residences of those who are appointed for the first year; provided, at any time during the existence of the corporation, the number of the directors may be increased, in corporations for profit, by a majority of the stockholders of the corporation, to any number not exceeding eleven, who must be members of the corporation, whereupon a certificate stating the number of directors must be filed as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation;

6. The amount of its capital stock, and the number of shares into which it is divided;

7. If there is a capital stock, the amount actually subscribed and by whom. [*Amendment, approved April 1, 1876; Amendments 1875-6, 70; took effect from passage.*^(a)]

5291. *Certain corporations to state further facts in articles.*

SEC. 291. The articles of incorporation of any railroad, wagon road or telegraph organization must also state:

1. The kind of road or telegraph intended to be constructed;
2. The place from and to which it is intended to be run, and all the intermediate branches;
3. The estimated length of the road or telegraph line;
4. That at least ten per cent. of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

5292. *Articles to be subscribed and acknowledged—number and qualification of signers.*

SEC. 292. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 199; took effect July 1, 1874.*^(b)]

5293. *Prerequisite to filing articles.*

SEC. 293. Each intended corporation named in section 291, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit:

1. One thousand dollars per mile of railroad;
2. One hundred dollars per mile of telegraph lines;
3. Three hundred dollars per mile of wagon roads.

5294. *Prerequisite to filing articles of corporations for profit.*

SEC. 294. Before the articles of incorporation of any corporation referred to

(a) The original section did not have the proviso or the second sentence in the fifth subdivision, in other respects it was like the amendment in the text.

It was previously amended, by act of March 30, 1874; Amendments 1873-4, 199, so as to have only six subdivisions, the first four being the same as in the original and the fifth and sixth as follows:

"5. The number of its directors, or trustees, and the

names and residences of such of them who are to serve until the election of such officers and their qualification; 6. If there be a capital stock, its amount and the number of shares into which it is divided."

(b) The original section used the word "three" instead of "a majority," and the word "grants" instead of "conveyances."

in the preceding section are filed, there must be paid for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent. of the amount subscribed.

5295. *Oath of officer to subscription of stock and payment of ten per cent.*

SEC. 295. Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent. thereof actually paid to a treasurer for the benefit of the corporation.

5296. *Articles to be filed with county clerk and secretary of state.*

SEC. 296. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of state, and the affidavit mentioned in the last section, where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated or in this code otherwise specially provided. [*Amendment, approved March 30, 1874; Amendments 1873-4, 199; took effect July 1, 1874.*^(a)]

5297. *Certified copy of articles as prima facie evidence.*

SEC. 297. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all the courts and other places as prima facie evidence of the facts therein stated. [*Amendment, approved March 30, 1874; Amendments 1873-4, 200; took effect July 1, 1874.*^(b)]

5298. *Who are members and who stockholders of corporation.*

SEC. 298. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

[SEC. 299^(c) was repealed by act approved March 30, 1874; Amendments 1873-4, 200; took effect July 1, 1874. Afterwards, a new section 299 was adopted and added to the code, as follows:]

5299. *Corporation to file articles in county where it holds property.*

SEC. 299. No corporation hereafter formed under the provisions of this chapter shall purchase, locate, or hold property in any county of this state, without filing a certified copy of the certificate of its articles of incorporation in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made, and every corporation now in existence must, within ninety days after the passage of this act, file a certified copy of the certificate of its articles of incorporation as provided in this section, and a certified copy of such copy shall, as evidence, have the same force and effect as a certified copy of the original. Any corporation failing to

(a) Original section:

SEC. 296. Upon the filing of the articles of incorporation in the office of the county clerk of the county in which the business of the company is to be transacted, and a copy thereof with the secretary of state, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that such articles, containing the required statement of facts, have been filed in his office; and thereafter the persons signing the same, and their associates and assigns, are

a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or in this part otherwise specially provided.

(b) The original section had the word "primary" instead of "prima facie."

(c) Repealed section:

SEC. 299. If a member of a corporation dies, resigns, or is removed, a majority of the remaining members may elect another in his place.

§ 300. Every corporation that has been or may be created under the general laws of this State, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor in the same manner as corporations formed under the provisions of Chapter One, Article One, of the Civil Code, relating to the formation of corporations; *provided*, that no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control into capital stock, but such funds or money must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting and its object must be given by the President of such corporation by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, duly certified by the President and Secretary of the corporation, must be filed in the offices of the Secretary of State and Clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock. *And provided, further*, that no bank in this State shall ever pay any dividend upon so-called guaranty notes, nor upon any stock except upon the amount actually paid in money to said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors coming to the same, jointly and severally liable to the depositors to the extent thereof. [In effect May 28th, 1878.]

stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in section 301.

5303. *By-laws, for what may provide.*

Sec. 303. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The time of the annual election for directors, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors; and
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense. [*Amendment, approved March 30, 1874; Amendments 1873-4, 20; took effect July 2, 1874.*^(b)]

(a) Original section:

Sec. 301. Every corporation formed under this title must, at a meeting of its stockholders or members, to be held within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the constitution and laws of this State. Notice of such meeting, by order of the acting president, specifying its object, must be published two weeks in some newspaper published in the county where the meeting is to be held; or if none is published therein, then in a paper published in an adjoining county. In the adoption of the by-laws, each stockholder has as many votes as he holds shares of stock; if there is no capital stock, each member has one vote. A majority of all the subscribed capital stock, or of the members, if there is no capital stock, is necessary to adopt the by-laws, or any one of them.

(b) Original section:

Sec. 303. A corporation may, by its by-laws, where no other provision is specially made, provide: 1. The time, place, and manner of calling and conducting their meetings; 2. The number of stockholders or members, or the quantity of stock constituting a quorum; 3. The number of shares which entitles the stockholders respectively to one or more votes; 4. The mode of voting by proxy; 5. The time and place of the annual election for directors, and the mode and manner of giving notice thereof; 6. The mode of selling shares for the non-payment of assessments or installments; 7. The compensation and duties of officers; 8. The tenure of office of subordinate officers; and, 9. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

it maintain or defend any
*New section, approved April
ssage.*

MEETINGS.

title must, within one month
f by-laws for its government
this state. The assent of
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the principal place of business
therein, then in a paper pub-
rder of the acting president.
f the stock, or of two thirds
l be effectual to adopt a code
*Amendment, approved March
1, 1874.*^(a)

be elected annually by the

5304. *By-laws to be recorded in "Book of By-laws."*

SEC. 304. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as the "Book of By-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members called for that purpose by the directors, by a vote representing two thirds of the subscriber's stock, or by two thirds of the members, or the power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the board of directors. The power when delegated may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted shall be stated, in the said book, and until so stated, the repeal shall not take effect. [*Amendment, approved March 30, 1874; Amendments 1873-4, 201.*^(a)]

5305. *How many and who to be directors.*

SEC. 305. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporations; except that corporations formed, or to be formed, for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business and property thereof may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such order or organization. A majority of the directors must be in all cases citizens of this state. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. [*Amendment, approved January 20, 1876; Amendments 1875-6, 71; took effect from passage.*^(b)]

5306. *Directors to be elected at first meeting.*

SEC. 306. At the first meeting at which the by-laws are adopted, or at such

(a) Original section:

SEC. 304. All by-laws adopted must be certified by the officers of the corporation, and filed and recorded in the recorder's office of the county where the principal place of business of the corporation is located. The by-laws thus adopted must not be altered or amended, except at a special meeting of the stockholders or members, to be called by the directors for that purpose, specifying in the order the proposed amendments; and a two third vote of all the subscribed capital stock, or of the members, is necessary to adopt the same. And the amendments thus adopted must be certified and recorded in the same manner as the original by-laws.

(b) Original section:

SEC. 305. The corporate powers, business, and prop-

erty of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporation. A majority of the directors must be citizens of this state. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified. [*Amendment, approved March 30, 1874; Amendments 1873-4, 202; took effect July 1, 1874.*^(a)]

§ 307. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section three hundred and twelve of this Code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case, the directors receiving the highest number of votes shall be declared elected. [In effect, April 2, 1878.]

ballot, and a vote of stock-capital stock, or of a majority of the capital stock in the corporation for each share held by him at the regular meetings of stockholders. [*Amendments 1873-4, 202; took effect*

the election of a president, who must be one of their number, a secretary, and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

5309. *Dividends to be made from surplus profits.*

SEC. 309. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence.

5310. *Removal from office of directors, etc.*

SEC. 310. No director shall be removed from office, unless by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call

(a) Original section:

SEC. 309. At the first meeting called, as soon as the by-laws are adopted, unless it is provided that the officers named in the articles of incorporation shall continue until a certain other date, directors must be elected, a majority of the subscribed capital stock, or of the members, being necessary to a choice.

(b) Original section:

SEC. 307. All elections must be by ballot, and unless otherwise prescribed by the by-laws, a majority of the subscribed capital stock or of the members is necessary to a choice.

may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 301 of this title, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

5311. *Justice of peace may order meeting, when.*

SEC. 311. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

5312. *Majority of stock must be represented, and majority vote at elections.*

SEC. 312. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented, either

§ 312. Ninth line, read "at the instance of absent or any stockholders or" etc. Third line from last, erase "or majority vote," reading "or no election had." [In effect, April 1, 1878.]

least ten days prior to the election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had—such adjournment and the reasons thereof being recorded in the journal of proceedings of the board of directors.

5313. *Stock of minors, insane, or deceased, how represented.*

SEC. 313. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator. [Amendment, approved March 30, 1874; Amendments 1873-4, 203; took effect July 1, 1874.^(a)

5314. *Election may be postponed.*

SEC. 314. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in section 310 of this

§ 315. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the District Court of the district in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the Court, or the Judge thereof, to the adverse party or those to be affected thereby. [In effect, April 1, 1878.]

guarding elections.

body corporate aggrieved by proceedings thereof, the district court must proceed forthwith to hear the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order

meetings of the corporation by the legal representative of the person holding the same.

a new one, or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

5316. *Officers liable for false certificates, reports or notices.*

SEC. 316. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. [*Amendment, approved March 30, 1874; Amendments 1873-4; 203; took effect July 1, 1874.*^(a)]

5317. *Meeting by consent to be valid.*

SEC. 317. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

5318. *Proceedings at meeting to be binding.*

SEC. 318. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

5319. *Meetings, where held.*

SEC. 319. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

5320. *When no provision in by-laws for regular meetings, special meetings, how called.*

SEC. 320. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

5321. *Book and notice of directors and stockholders of banks.*

SEC. 321. Every corporation doing a banking business in this state, must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice signed by the president or secretary, showing:

1. The names of the directors of such corporation;
2. The number and value of shares of stock held by each director. The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations formed or existing before twelve o'clock noon of the day on which this code took effect, as well as to those formed after such time. [*New section, approved January 29, 1876; Amendments 1875-6, 72; took effect sixtieth day after passage.*]

(a) Original section:

SEC. 316. Any officer of a corporation who makes or gives a certificate, official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, and who knew

or had full opportunity to know the same to be false, is liable for all the debts of the corporation contracted while he was a stockholder or officer thereof; and if more than one violate the provisions of this section in concert, they are jointly and severally liable.

An Act concerning corporations and persons engaged in the business of banking.

Approved April 1, 1876; 1875-6, 729.

Banks to publish and record semi-annual statements.

SECTION 1. Every corporation and all persons and every person hereafter doing a banking business in this state shall, in January and July of every year, publish in at least one newspaper published in the county in which the principal office of such corporation may be situated, or in which said persons or person may reside, and also file for record, in the recorder's office of said county, a sworn statement, verified, in the case of any such corporation, by its president or manager, and by its secretary or cashier, and in the case of any such individual or individuals, by him or them, of the amount of capital actually paid into such corporation, or into such banking business; provided, that nothing shall be deemed capital actually paid in except money bona fide paid into the treasury of such bank, and under no circumstances shall the promissory note, check, or other obligation of any director or stockholder, or of the proprietors or proprietor of any such bank, be treated, computed, or in any manner considered any part of such actually paid in capital. If no newspaper of general circulation be published in the aforementioned county, then and in that case such publication of said statement shall be made in at least one newspaper of general circulation published in the city and county of San Francisco, and in one newspaper of general circulation published in the city and county of Sacramento.

Assets and liabilities to be described.

SEC. 2. Every corporation and all persons and every person hereafter doing a banking business in this state shall likewise publish in such newspaper or newspapers, and shall also file for record, in the recorder's office of said county, in January and July of each year, a like sworn statement of the actual condition and value of its assets and liabilities, and where said assets are situated.

Liability for making false statement.

SEC. 3. The directors of every such corporation which shall publish or file for record, as aforesaid, a false statement of the amount of capital actually and bona fide paid into such corporation, or a false statement of the actual condition and value of its assets and liabilities, or as to where said assets are situated, shall be jointly and severally liable to any person thereafter dealing with such corporation to the full extent of such dealing; and no corporation, and no person or persons who fail to comply with the provisions or any of the provisions of this law, shall maintain or prosecute any action or proceeding in any of the courts of this state until they shall have first duly filed the statements herein provided for, and in all other respects complied with the provisions of this law; no shall any assignee or assignees of any such corporation or person whose assignment shall be made subsequent to any such failure to comply with the provisions of this law, maintain any action or proceeding in any court of this state until his or their assignor or assignors shall have first duly complied with the provisions of this law.

Foreign banking corporations.

SEC. 4. Where any of such banking corporations shall be foreign, the statements hereinbefore provided for shall be verified by the agent or manager of the business of such corporation resident in this state, who shall be subject to the same liabilities herein provided as against directors of any such banking corporation, and also as against every such bank officer.

Recorder to keep records.

SEC. 5. The recorder of each county of this state shall keep two sets of well-bound books for the record of the sworn statements herein provided for,

respectively, one of which sets of books shall be labeled "Statements of Banking Capital," and the other, "Statements of Banking Assets," and said recorder shall, upon the payment of his fees for the same, record separately said respective sworn statements in its appropriate book, and shall keep a separate index of each of said sets of books. Said original sworn statements need not be acknowledged in order to be recorded as aforesaid, but must be verified as aforesaid before some judge or officer of this state authorized to take affidavits to be used before any court in this state, and shall always remain and be kept on file in the office of said recorder.

Fees of recorder.

SEC. 6. The recorder of every county in this state shall receive, for recording any of the sworn statements herein provided for, for every folio, twenty-five cents; and for noting on any such sworn statement the time when and the place where recorded, twenty-five cents; and for certified copies of such sworn statements, to which any one paying for the same shall be entitled, twenty-five cents per folio.

SEC. 7. This act shall take effect from and after its passage.

[After the passage of the above new section 321, the legislature passed a second new section 321 as follows:]

Change of principal place of business.

SEC. 321. Every corporation that has been or may be created under the general laws of this state, may change its principal place of business from one place to another in the same county, or from one city or county to another city or county, within this state. Before such change is made, the consent in writing of the holders of two thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published at least once a week for three successive weeks in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it. [*New section, approved April 3, 1876; Amendments 1875-6, 73; took effect immediately.*]

CHAPTER II.

CORPORATE STOCK.

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ARTICLE I.

STOCK AND STOCKHOLDERS.

5322. *Stockholders liable for debts.*

SEC. 322. Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders for the proportion his claim, payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If a stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such

debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another, and also to every person who has advanced the installments or purchase-money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person, or estate represented, is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this state. [*Amendment, approved March 15, 1876; Amendments 1875-6, 73; took effect sixtieth day after passage.*]^a

5323. *Certificates, how and when issued.*

SEC. 323. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

5324. *Transfer of shares.*

SEC. 324. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property and may be transferred by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid, except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to

(a) Original section:

SEC. 322. Each stockholder or member of any corporation is severally, individually, and personally liable for such proportion of all its debts and liabilities as the amount of stock or shares owned by him in such corporation bears to the whole of the subscribed capital stock or shares of the corporation, for the recovery of which joint or several actions may be instituted and prosecuted; and in any such action against any of the stockholders or members of a corporation, the court must ascertain and determine the proportion of the debt which is the subject of the suit for which each of the stockholders or members who are defendants in the action are severally liable, and judgment must be

given severally in conformity therewith. If any stockholder or member of a corporation pays his proportion of any debt due by such corporation he is released and discharged from any further individual or personal liability for such debt. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder, but the pledgor or person or estate represented is the stockholder.

The section was previously amended by act of March 30, 1874; Amendments 1873-4, 204, so as to read like the amendment in the text, except that it did not have the last sentence, commencing with the words "The liability of each stockholder."

whom transferred, the number or designation of the shares, and the date of the transfer.

5325. Shares held by married women, etc.

SEC. 325. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a femme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

5326. Non-resident stockholders.

SEC. 326. When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor, to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent or claimant, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or if not so satisfactory, then one approved by a district judge, or the county judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 205; took effect July 1, 1874.*^(a)]

ARTICLE II.

ASSESSMENTS OF STOCK.

5331. Directors may levy assessments.

SEC. 331. The directors of any corporation formed or existing under the laws of this state, after one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent provided herein. [*Amendment, approved March 30, 1874; Amendments 1873-4, 206; took effect July 1, 1874.*^(b)]

5332. Limitation of assessments.

SEC. 332. No one assessment must exceed ten per cent. of the amount of the

(a) Original section:

SEC. 326. In all transfers of shares of stock in corporations, on behalf of owners residing out of the state, the president, secretary, or directors of such corporation, before entering such transfer on the books of the corporation or issuing the certificate therefor to the transferee, must require from such attorney, or from the person claiming under such transfer, a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or if not so satisfactory, then approved by the district judge of the district in which the principal office of the corporation is situated, conditioned to protect such corporation against any liability

to the legal representatives of the owner of such stock, in case of his or her death before such transfer; and in case of refusal to furnish such bonds upon request, such transfer is utterly void as against the corporation.

(b) Original section:

SEC. 331. The directors of any corporation formed under the laws of this state for the purpose of paying expenses, conducting business, or paying debts, may levy and collect assessments upon the capital stock thereof, in the manner and form and to the extent provided herein.

capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided;

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

5333. *Levy of assessment.*

SEC. 333. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment;

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second or third subdivision of section 332.

5334. *What order shall contain.*

SEC. 334. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

5335. *Notice of assessment.*

SEC. 335. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed), will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

5336. *Service and publication of notice.*

SEC. 336. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business

of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 206; took effect July 1, 1874.*^(a)]

5337. *Delinquent notice.*

SEC. 337. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the [date], if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

5338. *Contents of notice.*

SEC. 338. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

5339. *Publication of notice.*

SEC. 339. The notice when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

5340. *Jurisdiction acquired, how.*

SEC. 340. By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

5341. *Sale to be by public auction.*

SEC. 341. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

(a) Original section:

SEC. 336. The notice must be published once each week for four successive weeks, in some daily or weekly paper published at the place designated in the articles of incorporation as the principal place of business, and also in some paper published in the county in which the works of the corporation are situated, if a paper is published therein. If the works of the corporation are not situated within some state or territory of the United States, then publication in a paper of

the place where situated is not necessary. If there is no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in the newspaper published in an adjoining county. The notice may be served by delivering a copy thereof, certified by the secretary, to each stockholder personally; and in case of such service upon all the stockholders of the corporation, no notice by publication is necessary, but such personal notice is sufficient.

5342. *Highest bidder to be the purchaser.*

SEC. 342. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

5343. *In default of bidders, corporation may purchase.*

SEC. 343. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

5344. *Disposition of stock purchased by corporation.*

SEC. 344. All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

5345. *Extension of time of delinquent sale.*

SEC. 345. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

5346. *Assessments shall not be invalidated.*

SEC. 346. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

5347. *Action for recovery of stock and limitation thereof.*

SEC. 347. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

5348. *Publication, how proved.*

SEC. 348. The publication of notice required by this article, may be proved

by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase-money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation, are prima facie evidence of the contents thereof. [*Amendment, approved March 30, 1874; Amendments 1873-4, 207; took effect July 1, 1874.*^(a)]

5349. *Waiver of sale—Action to recover assessment.*

SEC. 349. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

CHAPTER III.

CORPORATE POWERS.

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ARTICLE I.

GENERAL POWERS.

5354. *Powers of corporations.*

SEC. 354. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually;
2. To sue and be sued, in any court;
3. To make and use a common seal, and alter the same at pleasure;
4. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this Part;
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;
6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock;
7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;
8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

5355. *Limitation of power.*

SEC. 355. In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this Part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

(a) The original section had the word "primary" in place of "prima facie."

5356. Banking expressly prohibited.

SEC. 356. No corporation shall create or issue bills, notes or other evidences of debt, upon loans or otherwise, for circulation as money.

5357. Misnomer does not invalidate instrument.

SEC. 357. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

5358. Corporation to organize within one year.

SEC. 358. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this Part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney-general.

5359. Increasing and diminishing capital stock.

SEC. 359. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish the capital stock, must be personally served on each stockholder resident in the state, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week, for four weeks successively;

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated costs of the works which it may be the purpose of the corporation to construct.

3. At least two thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution, before it can be effected;

4. A certificate must be signed by the chairman and secretary of the meeting, and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, and the vote by which the object was accomplished;

5. The certificate must be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the capital stock shall be so increased or diminished;

6. The written assent of the holders of three fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock, as if a meeting were called and held; and upon such written assent, the directors may proceed to make the certificate herein provided for. [*Amendment, approved March 30, 1874; Amendments 1873-4, 207; took effect July 1, 1874.*^(a)]

(a) Original section:

SEC. 359. Every corporation may increase or diminish its capital stock as in this section provided:

1. By a majority vote of the directors there may be called a meeting of the stockholders, to be convened for the purpose of increasing or of diminishing the capital stock;

2. Personal notice of the time and place of such meeting, and the object thereof, must be served on each stockholder resident in this state; or, in lieu thereof, the notice must be published in every issue of

a newspaper published in the county where the principal place of business is located, for four weeks successively;

3. The notice must also contain the amount to which it is proposed to increase or diminish the capital stock;

4. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works which it may be the object or purpose of the corporation to construct;

5. At least four fifths of all the capital stock must be represented at such meeting, and at least two thirds of

5360. Acquisition of real property.

SEC. 360. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in Title VII, Part III, Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title. [*Amendment, approved March 30, 1874; Amendments 1873-4, 208; took effect July 1, 1874.*^(a)]

[For title of Code of Civil Procedure referred to, see post, 11,237.]

An Act to authorize corporations to own and improve the lots and houses in which their business is carried on.

Approved April 1, 1876; 1875-6, 653.

May hold lot, etc.

SECTION 1. By unanimous consent of its members or stockholders, any corporation existing under the laws of this state may acquire and hold the lot and house in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

SEC. 2. This act shall take effect immediately.

5361. Consolidation of mining corporations.

SEC. 361. It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall take place without the written consent of the stockholders representing two thirds of the capital stock of each company; and no such consolidation shall in any way relieve such companies, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given by advertising for one month in at least one newspaper in the county and state where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county, or city and county, where the principal place of business of any of said companies shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the secretary of state. Such certificate shall be signed by a majority of each board of trustees or directors of the original companies; and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company for the year thence next ensuing. The said certificate shall also contain all the requirements pre-

the entire capital stock must vote in favor of such increase or diminution before the same is effected;

6. A certificate, signed and verified by the chairman and secretary of the meeting, must be made, showing a strict compliance with all the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock (and by whom held) represented at the meeting, the vote by which the object was accomplished, the amount of capital stock actually paid in, and the amount of all debts and liabilities of the corporation, and how secured.

7. This certificate must be subscribed by a majority of the directors, and duplicates made, one to be filed

in the office of the county clerk and one in the office of the secretary of state, as provided for original articles of incorporation, and thereupon the capital stock is so increased or diminished.

a) Original section:

SEC. 360. No corporation shall acquire or hold any more real estate than may be absolutely necessary for the use of the business conducted or the construction of their works, except as specially provided. A corporation organized for any purpose specified in subdivisions 3, 4, 5, 7, 8 and 15, of section 286, may acquire real property as provided in Title VII, Part III, Code of Civil Procedure, when needed for the uses and purposes therein mentioned.

scribed by section 290 of said Civil Code. [*New section, approved March 20, 1876; Amendments 1875-6, 75; took effect from passage.*]

An Act to add another section to the civil code.

Approved March 20, 1875-6; Amendments 1875-6, 75.

[SEC. 1 contains the additional section 361 to the Civil Code above inserted.]

SEC. 2. This act shall apply to all corporations formed under the laws of this state, whether formed under the said Civil Code, or prior thereto.

SEC. 3. This act shall take effect from and after its passage.

ARTICLE II.

RECORDS.

5377. *Records, of what and how kept.*

SEC. 377. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full—all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

5378. *Other records to be kept by corporations for profit, and others.*

SEC. 378. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

ARTICLE III.

EXAMINATION OF CORPORATIONS, ETC.

5382. *Examination into affairs of corporation by state officers.*

SEC. 382. The attorney-general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney-general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

5383. *Examination made by the legislature.*

SEC. 383. The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and, for that

purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

5384. *Chapter and article may be repealed.*

SEC. 384. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

ARTICLE IV.

JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY.

5388. *Franchise may be sold under execution.*

SEC. 388. For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise and all the rights and privileges thereof may be levied upon and sold under execution, in the same manner and with like effect as any other property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 208; took effect July 1, 1874.*^(a)]

5389. *Purchaser to transact business of corporation.*

SEC. 389. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, as hereinafter provided.

5390. *Purchaser may recover penalties, etc.*

SEC. 390. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

5391. *Corporation to retain powers after sale.*

SEC. 391. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

5392. *Redemption of franchise.*

SEC. 392. The corporation may, at any time within one year after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

(a) The original section, instead of "authorized to receive tolls," had the words "organized for profit."

5393. Sale, under execution, where.

SEC. 393. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated. [*Amendment, approved March 30, 1874; Amendments 1873-4, 209; took effect July 1, 1874.*^(a)]

CHAPTER IV.

EXTENSION AND DISSOLUTION OF CORPORATIONS.

5399. Proceedings to disincorporate.

SEC. 399. The dissolution of corporations is provided for:

1. If involuntary—in Chapter V of Title X, Part II, of the Code of Civil Procedure;

2. If voluntary—in Title VI, Part III, of the Code of Civil Procedure. [See post, 10,802 and 11,227.]

5400. On dissolution, directors to be trustees for creditors.

SEC. 400. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

5401. May extend term of existence.

SEC. 401. Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members, called by the directors expressly for considering the subject, if voted by stockholders representing two thirds of the capital stock; or by two thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk, where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation shall be extended for the specified period. [*Amendment, approved March 30, 1874; Amendments 1873-4, 209; took effect July 1, 1874.*^(b)]

[SEC. 402^(c) was repealed by act approved March 30, 1874; Amendments 1873-4, 209; took effect July 1, 1874.]

5403. Title I to apply to all corporations, with certain exceptions.

SEC. 403. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special pro-

(a) Original section:

SEC. 393. The levy and sale of any franchise under execution may be had in any county in which the president or any director, the treasurer or the secretary of the corporation may reside, or in which the corporation has its principal place of business.

(b) Original section:

SEC. 401. Every corporation heretofore formed, for any purpose enumerated in this title for which corporations may be formed, for a period of time less than fifty years, may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension must be made at a meeting of the stockholders or members, after such order of the directors and notice thereof, with such amount of capital stock or number of members represented, and such affirmative vote thereof, as required herein for the increase or diminution of the capital stock, and filing a certificate thereof in the same offices where their articles of incorporation are filed.

(c) Repealed section:

SEC. 402. All corporations may continue their existence for an additional period, not exceeding fifty years, by filing a certificate, verified by the affidavit of the president and secretary, setting forth that, at a meeting of four fifths of the members or stock, and on a two thirds vote thereof, it was determined to continue such corporation for such additional length of time, the meeting of the stockholders or members to be had after notice thereof, published for four weeks in some newspaper in the county where the principal office of the corporation is located, giving the time and place of meeting; or, in lieu thereof, personal notice of such time and place of meeting may be served on all stockholders or members resident in this state—the notice to specify the object of the meeting and the length of time for which it is proposed to continue the corporation.

vision is made in relation thereto, inconsistent with some provision in this title, in which case the special provision prevails.

An Act in relation to foreign corporations.

Approved April 1, 1872; 1871-2, 826.

Foreign corporations to designate person upon whom process may be served.

SECTION 1. Every corporation heretofore created by the laws of any other state and doing business in this state, shall, within one hundred and twenty days after the passage of this act, and any corporation hereafter created and doing business in this state, within sixty days from the time of commencing to do business in this state, designate some person residing in the county in which the principal place of business of said corporation in this state is, upon whom process issued by authority of or under any law of this state may be served, and within the time aforesaid shall file such designation in the office of the secretary of state; and a copy of such designation, duly certified by said officer, shall be evidence of such appointment; and it shall be lawful to serve on such person so designated any process issued as aforesaid. Such service shall be made on such person in such manner as shall be prescribed in case of service required to be made on foreign corporations, and such service shall be deemed to be a valid service thereof.

Penalty for failure to designate.

SEC. 2. Every corporation created by the laws of any other state which shall fail to comply with the provisions of the first section of this statute shall be denied the benefit of the statutes of this state limiting the time for the commencement of civil actions.

Privileges on compliance.

SEC. 3. Every corporation created by the laws of any other state which shall comply with the provisions of the first section of this statute shall be entitled to the benefit of the statutes of this state limiting the time for the commencement of civil actions.

TITLE II.

Insurance Corporations.

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CHAPTER I.

GENERAL PROVISIONS.

5414. *Subscriptions to capital stock opened, and how collected.*

SEC. 414. After the secretary of state issues the certificate of incorporation, as provided in Article I, Chapter I, Title I, of this Part, the directors named in the articles of incorporation must proceed in the manner specified, or in their by-laws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and installments thereon, and to collect the same, as in Chapter II of Title I provided.

5415. Purchase and conveyance of real estate.

SEC. 415. No insurance corporation must purchase, hold, or convey real estate, except as hereinafter set forth, to wit:

1. Such as is requisite for its accommodation in the convenient transaction of its business, not exceeding in value one hundred and fifty thousand dollars;
2. Such as is conveyed to it, or to any person for it, by way of mortgage or in trust, or otherwise, to secure or provide for the payment of loans previously contracted, or for moneys due;
3. Such as is purchased at sales upon deeds of trust or judgments obtained or made for such loans or debts;
4. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

All such real estate so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same. No such real estate must be held for a longer period than five years, unless the corporation first procures a certificate from the insurance commissioner that the interest of the corporation will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the insurance commissioner directs in the certificate.

5416. Policies, how issued and by whom signed.

SEC. 416. All policies made by insurance corporations must be subscribed by the president or vice-president, or in case of the death, absence or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal.

5417. Dividends, of what, and when declared.

SEC. 417. The directors of every insurance corporation, at such times as their by-laws provide, must make, declare, and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested as to them appears advisable; but the moneys received and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be treated as profits, nor divided, except as provided in Chapter II of this title.

5418. Directors liable for loss on insurance in certain cases.

SEC. 418. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance, or assent thereto, are severally and jointly liable for the amount of

unce.

§ 419. Every company, corporation, or association here-

after formed or organized under the laws of this State for the transaction of business in fire, marine, inland navigation, or life insurance, must have a subscribed capital stock equal to at least two hundred thousand dollars, twenty-five per cent. of which must be paid in previous to the issuance of any policy, and the residue within twelve months from the day of filing the certificate of incorporation. No person, corporation, or association organized or formed under the laws of any other State or country, as a stock company, must transact any such insurance business in this State, unless such person, corporation, or association has a paid up capital stock equal to at least two hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section six hundred and two of the Political Code of this State. Nor must any person, corporation, or association, organized or formed under the laws of any other State or country as a mutual insurance company, transact any such insurance business in this State, unless such person, corporation, or association possesses available cash assets equal to at least two hundred thousand dollars, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section six hundred two of the Political Code of this State. [In effect, April 1, 1878.]

ousand dollars.

ociation, except mutual life, health, or formed or organized, under the business in any kind of insurance, capital equal to at least two hundred thousand dollars; twenty-five per cent. whereof of any policy, and the residue by twelve months from the day of filing the certificate of incorporation, or person, or corporation, or country as a stock company, in this state, except on live stock, and has available

l-up capital stock equal to at least

ates gold coin, and has available

§ 420. Every company, corporation, or association hereafter formed or organized under the laws of this State for the transaction of business in any kind of insurance not enumerated in section 419 of the Civil Code, must have a subscribed capital stock equal to at least one hundred thousand dollars, which must be paid in at the times and in the manner prescribed for the payment of the capital stock of a corporation organized under section four hundred and nineteen of said Civil Code. No company, corporation, or association, formed or organized under the laws of any other State or country as a stock company, must transact any such insurance business in this State without a paid up capital stock of not less than one hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in section 692 of the Political Code of this State. Nor must any company, corporation, or association, formed or organized under the laws of any other State or country as a mutual insurance company, transact any such insurance business in this State unless such company, corporation, or association possesses available cash assets equal to at least one hundred thousand dollars over and above all liabilities for losses reported, expenses, taxes, and reinsurance of all outstanding risks, as provided in said section six hundred and two of the Political Code of this State. [In effect, April 1, 1875.]

1*

tion must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent. of the whole capital stock is paid up.

5425. *Certificate of capital stock paid up to be filed, and when.*

SEC. 425. The president and a majority of the directors must, within thirty days after the payment of the twenty-five per cent. of the capital stock, and also within thirty days after the payment of the last installment or assessment of the capital stock limited and fixed, prepare, subscribe, and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the county clerk of the county where the principal place of business of the corporation is located, and a duplicate thereof, similarly executed, with the insurance commissioner.

5426. *Property which may be insured.*

SEC. 426. Every corporation formed for fire or marine insurance, or both,

§ 427. Corporations hereafter organized under the laws of this State for the transaction of business in any kind of insurance may invest their capital and accumulations in the following named securities:

One—In the purchase of or loans upon interest-bearing bonds of the United States Government;

Two—In the purchase of or loans upon interest-bearing bonds of any of the States of the United States not in default for interest on such bonds;

Three—In the purchase of or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of the State of California not in default for interest on such bonds;

Four—In loans upon unincumbered real property, or upon merchandise in warehouse, worth at least one hundred per cent. more than the amount loaned.

But no investment in the securities named in subdivisions one, two, and three of this section must be made in amount exceeding the par value of such securities, nor exceeding their market value. [In effect, April 1, 1875.]

shall hereafter be formed or organized under the laws of this State for the transaction of business in any kind of insurance, except on live stock, without a subscribed capital equal at least to one hundred thousand dollars in United States gold coin, twenty-five per cent. whereof must be paid in previous to the issue of any policy, and the remainder by monthly or quarterly installments within twelve months from the day of filing the certificate of incorporation. Nor must any in-

hundred thousand dollars in assets, reported expenses, taxes, added in sections six hundred must any individual or person, under the laws of any other transact any kind of insurance s such person or corporation hundred thousand dollars in abilities for losses reported, ex- g risks, as provided in section 1 state. [Amendment, approved Febt sixtieth day after passage.]^(a)

CORPORATIONS.

l paid in twelve months.

a or marine insurance corpora-

ration may, by its board of in loans upon real or per- , or other securities, but no 1, or on the notes or obliga- approved March 30, 1874;

as must never take, on any insurance against fire, a sum aid in, and intact at the time

person be permitted to transact business any non-resident person or corporation, except on live stock, in any kind of insurance, unless such person or corporation possesses available cash assets, exclusive of stock notes, to the amount of at least one hundred thousand dollars in United States gold coin, over and above all liabilities. (b) The original section, instead of "or on the notes or obligations of any of its stockholders," had the words "as security."

of taking such risk, without reinsuring the excess above one tenth. [*Amendment, approved March 30, 1874; Amendments 1873-4, 210; took effect July 1, 1874.*]^(a)

§ 429. No corporation formed hereafter under the laws of this State, and transacting fire, marine, inland navigation insurance business, or insurance provided for by section four hundred and twenty of this Code, must make any dividends except from profits remaining on hand after retaining unimpaired :

1. The entire subscribed capital stock ;
2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks ;
3. A fund equal to one-half of the amount of all premiums on all other risks not terminated at the time of making such dividend ;
4. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes. [In effect, April 1, 1878.]

all liabilities for expenses and taxes.

5430. *Amounts to be reserved by companies with less than two hundred thousand dollars capital.*

SEC. 430. No fire or marine insurance corporation, with a subscribed capital of less than two hundred thousand dollars, must declare any dividends, except from profits remaining on hand after reserving:

1. A sum necessary to form, with the subscribed capital stock, the aggregate sum of two hundred thousand dollars;
2. All the premiums received or receivable on outstanding marine or inland risks, except marine time risks;
3. A fund equal to one half the amount of all premiums on fire risks and marine time risks not terminated at the time of making such dividend;
4. A sum sufficient to pay all losses reported or in course of settlement, and

insurance business under
from profits remaining

ading marine or inland

miums on fire risks and
such dividend;

urse of settlement, and

§ 431. No corporation, formed under the laws of this State, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired :

One—The entire capital stock ;

Two—A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes ;

Three—A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the American Experience Table of Mortality, and interest at the rate of four and one-half per cent. per annum. [In effect, April 1, 1878.]

for the purpose of discovering
n conflagration.

efore organized and now
the laws of this state, for
d of saving property and
thin any municipal corpo-

ration of this state, shall have power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and apparatus therefor, whose duty it shall be, so far as practicable, to discover and prevent fires and save property and human life from conflagration; and for the effective discharge of such duties, power and authority is hereby granted such corps to enter any building on fire, or in which property is on fire, or which such corps or any officer thereof shall deem to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and protect from conflagration or damage by water any property, during and immediately after such fire; provided, however, that nothing in this act shall be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; and provided further, that no act of such corps shall justify any owner of any building or property in abandoning such building or property.

^(a) The original section had the words "or either" after "corporations," but did not have the words "and intact at the time of taking such risk."

Privileges granted to fire patrol corps.

SEC. 2. Such corporation, with its officers and corps, when running to a fire, shall, with its horses, vehicles, and salvage apparatus, have the same right of way as is or may be bestowed by any ordinance of the municipality or law of this state upon the regular fire department of the municipality wherein such corporation is acting; provided, that the rights of such fire department shall always be paramount to the rights of said corporation. All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such a corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons willfully or carelessly obstructing the progress of the apparatus of the fire department of such city and county, or city or town, while going to a fire, or of any person or persons willfully or carelessly injuring any animal or property of said fire department, shall be equally applicable to any person or persons willfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any person or persons who shall willfully or carelessly injure any animal or property of such corporation; and said laws and ordinances, and their penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department.

Costs and expenses of maintaining organization, how assessed.

SEC. 3. Each such corporation shall have power to assess its members for the cost of establishing and maintaining its organization, upon the basis of insurance business transacted by such members within the municipality where such corporation is carrying on business, and in such manner as is or may be provided for by its by-laws, and all assessments so made may be duly enforced under and by virtue of the laws of this state. For the purpose of ascertaining the basis of such assessments such corporation shall have power to require and demand from each and every member thereof, quarterly statements, sworn to by the president or secretary, in case the insurance company or member on which the demand is made shall be incorporated under the laws of this state, or otherwise by the agent of the company who shall be recognized as such by the insurance commissioner of this state, which quarterly statement shall show the aggregate amount of premiums received and receivable for fire insurance upon property within such municipality, by said company or member, during the three months next preceding, respectively, the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December, in each year, and a demand by the secretary or treasurer of such corporation, made within fifteen days after the termination of any such quarter of a year, as hereinabove set forth, shall be considered the demand herein provided for, and any member who shall fail to make such statement within ten days after such demand, shall, for each day's delay after such ten days, forfeit ten dollars, to be added to such member's next assessment, and payment thereof to be enforced in like manner as is provided for enforcing payment of assessments.

SEC. 4. This act shall take effect and be in force from and after its passage.

CHAPTER III.

MUTUAL LIFE, HEALTH AND ACCIDENT INSURANCE CORPORATIONS.

5437. *Capital stock—Guarantee fund.*

SEC. 437. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any

fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than one hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "Guarantee Fund," of not less than two hundred and fifty thousand dollars, as hereinafter provided. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect.

5438. *Of what guarantee fund shall consist.*

SEC. 438. The guarantee fund mentioned in the preceding section must consist of the promissory notes of solvent parties, approved by the board of directors and by each other, payable to the corporation or its order, and at such times, in such modes, and in such sums, with or without interest, and conformable in all other respects to such requirements as the board of directors prescribe; but the amount of the notes given by any one person must not exceed in the whole the sum of five thousand dollars, exclusive of interest. Such note must be payable absolutely and at the option of the corporation; they must be negotiable, and may be indorsed and transferred, or converted into cash, or otherwise dealt with by the corporation, at its discretion, without reference to any contingency of losses or expenses. Such notes, or the proceeds thereof, must remain with the corporation as a fund for the better security of persons dealing with it, and constitute the assets of the corporation, liable for all its debts, obligations and indebtedness next after its assets from premiums and other sources, exclusive of capital stock, until the net earnings, over and above its expenses, losses and liabilities, shall have accumulated in cash, or securities in which the net earnings have been invested, to a sum which, with the capital stock, is equal to the aggregate of the original amounts of the guarantee fund and of the capital stock.

5439. *What constitutes, and deficiency in fixed capital.*

SEC. 439. The sum accumulated as provided in the preceding section, together with the capital stock, shall become and remain the fixed capital of the corporation, not subject to division among the stockholders or parties dealing with it, or to be expended in any manner otherwise than may be required in payment of the corporation's debts and actual expenses, until the business of the corporation is closed, its debts paid, and its outstanding policies and obligations of every kind canceled or provided for; and if from any cause a deficiency at any time occurs in such fixed capital, no further division of profits must take place until such deficiency has been made up.

5440. *Declaration of fixed capital to be filed.*

SEC. 440. Whenever the fixed capital of the corporation is obtained as hereinbefore provided, the president of the corporation and its actuary, or its secretary, if there is no actuary, must make a declaration in writing, sworn to before some notary public, of the amount of such fixed capital, and of the particular kinds of property composing the same, with the nature and amount of each kind, which must be filed with the original articles of incorporation, and a copy, certified by the county clerk, must be published for at least four successive weeks, in a newspaper published in the county where the principal business of the corporation is situated. Upon the filing of such declaration the guarantee fund is discharged of its obligations, and all notes of the fund remaining in the control of the corporation, and not affected by any lien thereon,

or claim of that nature, must be surrendered by it to the makers thereof, respectively, or other parties entitled to receive the same.

5441. *Guarantee notes and interest, how disposed of.*

SEC. 441. Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund, unless another note of equal solvency is substituted therefor, with the approval of the board of directors. The corporation must allow a commission, not exceeding five per cent. per annum, on all such guarantee notes while outstanding, and also interest on all moneys paid on such notes by the parties liable thereon, at the rate of twelve per cent. per annum, payable half yearly until repaid by the corporation, unless the current rate of interest is different from this amount, in which case the rate payable may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the current rate. [*Amendment, approved March 30, 1874; Amendments 1873-4, 210; took effect July 1, 1874.*^(a)]

5442. *Insured to be entitled to vote, when.*

SEC. 442. After the filing of the declaration of the fixed capital, as in this article provided, the holders of policies of life insurance for the term of life, on which the premiums are not in default, may vote at the election of directors, and have one vote for each one thousand dollars insured by their policies, respectively.

5443. *May invest in what securities.*

SEC. 443. The number of directors specified in the articles of incorporation may be altered from time to time during the existence of the corporation by resolution, at the annual meeting of a majority of those entitled to vote at the election of directors, but the number must never be reduced below five.

5444. *Investment of capital stock, on what securities.*

SEC. 444. Life, health, and accident insurance corporations may invest their capital stock as follows:

1. In loans upon unincumbered and improved real property within the State of California, which shall be worth at the time of the investment at least forty per cent. more than the sum loaned;

2. In the purchase of or loans upon interest-bearing bonds, and other securities of the United States and of the State of California;

3. In the purchase of or loans upon interest-bearing bonds of any of the other states of the Union, or of any county, or incorporated city, or city and county in the State of California;

4. In the purchase of loans upon any stocks of corporations formed under the laws of this state, except of mining corporations, which shall have, at the time of the investment, a value, in the city and county of San Francisco, of not less than sixty per cent. of their par value, and shall be rated as first-class securities; but no loans shall be made on any securities specified in subdivisions three and four of this section, in any amount beyond sixty per cent. of the market value of the securities, nor shall any loan be made on the stock of the corporation, or notes or other obligations of its corporators. [*Amendment, approved March 30, 1874; Amendments 1873-4, 211; took effect July 1, 1874.*^(b)]

(a) Original section:

SEC. 441. Until the guarantee fund is discharged from its obligations, as provided in the preceding section, no note must be withdrawn from the fund, unless another note of equal solvency is substituted therefor, with the unanimous approval of the board of directors then in office, and of all other parties liable on the rest of the notes comprising the guarantee fund. The corporation must allow a commission of five per cent. per annum on all such guarantee notes while outstanding, and also interest on all moneys paid on such

notes by the parties liable thereon, at the rate of twelve per cent. per annum, payable half yearly until repaid by the corporation. But such rate of interest may, from time to time, at intervals of not less than one year, be increased or reduced by the board of directors, so as to conform to the then current rates of interest.

(b) Original section:

SEC. 444. Life, health, and accident insurance corporations may invest their capital stock as follows:

1. In loans upon unincumbered and improved real

5445. *Limitations to holding of stock, etc.*

SEC. 445. The corporation may, by its by-laws, limit the number of shares which may be held by any one person, and make such other provisions for the protection of the stockholders and the better security of those dealing with it as to a majority of the stockholders may seem proper, not inconsistent with the provisions of this title or part.

5446. *Premiums, how payable.*

SEC. 446. All premiums must be payable wholly in cash, or one half or a greater proportion in cash, and the remainder in promissory notes bearing interest, as may be provided for by the by-laws. Agreements and policies of insurance made by the corporation may be upon the basis of full or partial participation in the profits, or without any participation therein, as may be provided by the by-laws and agreed between the parties.

5447. *Insurance commissioner to be furnished with valuation of policies outstanding.*

SEC. 447. Every life insurance corporation organized under the laws of this state must, on or before the first day of February of each year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other state or country, and doing business in this state, must, upon the written requisition of the commissioner, furnish him, at such time as he may designate, the requisite data for determining the valuation of all of its policies then outstanding. Such valuations must be based upon the rate of mortality established by the American experience life-table and interest at four and one half per cent. per annum. For the purpose of making the valuations, the insurance commissioner is authorized to employ a competent actuary, whose compensation for such valuations shall be three cents for each thousand dollars of insurance; to be paid by the respective companies whose policies are thus valued. [*Amendment, approved March 30, 1874; Amendments 1873-4, 211; took effect July 1, 1874.*^(a)]

5448. *No stamp required on accident insurance contract.*

SEC. 448. No stamp is required nor stamp duty exacted on any contract of insurance, when such contract insures against accident which may result in injury or death.

5449. *Valuation of policies—Retaliatory provision.*

SEC. 449. When the certificate of the insurance commissioner of this state, of the valuation of the policies of a life insurance company, as provided in section 447 of the Civil Code of this state, issued to any company organized under the laws of this state, shall not be accepted by the insurance authorities of any other state, in lieu of a valuation of the same, by the insurance officer of such other state, then every company organized under the laws of such other state, doing business in this state, shall be required to have a separate valuation of its

estate within the State of California, which shall be worth at the time of the investment at least fifty per cent. more than the sum loaned;

2. In the purchase of or loans upon interest-bearing stocks, bonds, and other securities of the United States, and of the states thereof;

3. In the purchase of or loans upon interest-bearing bonds of any incorporated city, or city and county, in the State of California;

4. In the purchase of or loans upon any stocks of companies and corporations formed under the laws of this state, except mining stocks, which shall have, at the time of the investment, a value, in the city and county of San Francisco, of not less than sixty per cent. of their par value, and shall be rated as first-class securities.

But no loans shall be made on any securities speci-

fied in subdivisions 2, 3, and 4 of this section in any amount beyond sixty per cent. of the market value of the securities, nor shall any loan be made on the stock of the corporation making the loan.

(a) Original section:

SEC. 447. Every life insurance corporation doing business in this state, or formed under the provisions of this part, must, on or before the first Monday in January of each year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December next preceding; which valuation must be based upon the rate of mortality as established by the American experience life table. The rate of interest to be assumed must be four and one half per cent. per annum.

policies made under the authority of the insurance commissioner of this state, as provided in section 447 of the Civil Code. [*New section, approved March 30, 1874; Amendments 1873-4, 270; took effect sixtieth day after passage.*]

5450. Policy, to contain what evidence—Penalty.

§ 450. Every policy of insurance upon life hereafter issued and delivered within the limits of the State of California, whether by a person, or corporation organized under the laws of this State or under those of any other State or country, or by the agent of such person or corporation, must contain written evidence that it was issued in this State. And the person or corporation, and the agent thereof, issuing and delivering such policy, without the evidence hereinbefore required, shall forfeit to the people of the State of California the sum of one hundred dollars for each [each] and every policy so issued, to be recovered by the Insurance Commissioner by suit in the name of the people of the State of California, in any Court of competent jurisdiction. [In effect, April 1, 1878.]

598 of the Political Code.

§ 451. Under any policy of insurance on life hereafter issued and delivered in this State, whether by a person, or corporation organized under the laws of California, or under those of any other State or country, the holder thereof, at any time during the continuance of the policy, shall be entitled to claim and recover of the insurer—any stipulation or condition of forfeiture contained in the policy or elsewhere to the contrary notwithstanding—a surrender value, to be determined as follows: The net value of the policy, at the time of demand upon the insurer for settlement and liquidation of the same, shall be ascertained according to the American Experience Rate of Mortality, with interest at four and one-half per centum per annum; from such value shall be deducted and canceled any indebtedness of the assured growing out of the policy, and a surrender charge to the company, to be ascertained as follows: Assuming the rates of mortality and interest as aforesaid, the present value of all the future contributions of the policy to pay death claims, or, in other words, of all the normal future yearly costs of insurance which by its terms it is exposed to pay, in case of its continuance, shall be calculated, and eight per centum of this sum shall be the legal surrender charge, and the remainder of the net value of the policy ascertained as aforesaid, after deducting this surrender charge, and any debts due the insurer as aforesaid, shall be payable to the insured in cash within sixty days after the amount is ascertained. If there shall not have been a settlement and liquidation of the policy as hereinbefore provided, and it shall have lapsed by reason of the non-payment of a premium, the insurer must nevertheless continue it in force as provided in the next ensuing section. [In effect, April 1, 1878.]

§ 452. The net value of the policy, at the expiration of the term for which the full amount of premiums shall have been paid, must be ascertained and determined in accordance with the formula set forth in the preceding section. After deducting from such net value any indebtedness to the insurer growing out of the policy, and canceling the same, and deducting also a surrender charge, as ascertained in accordance with the provisions of said preceding section, the remainder of such net value shall be considered as a net single premium of insurance. And in the case of any policy, other than an endowment, the amount which it will insure as a life policy shall be determined according to the age of the insured at the time of the lapse of the policy, and the rates of mortality and interest assumed in determining the net value of the same. In the case of an endowment, payable at a certain time, or at death, if it should previously occur, the remainder of the net value of the policy, ascertained as hereinbefore required, shall be considered as a net single premium of endowment insurance, and the amount which it will insure as an endowment for the unexpired term of the policy, shall be determined, according to the age of the insured and the rates of mortality and interest assumed in determining the net value of the policy. As thus adjusted, the policy is to be considered as continued in force, in accordance with its original terms, except for a smaller amount; which said amount shall be, by the company, indorsed on the policy as paid up insurance.

on life issued hereafter within the n or corporation, organized other state or country, or by ain written evidence that it d in this state, which shall of the holder null and void. without the evidence here- State of California, for each ed dollars in United States ioner, as provided by section March 30, 1874; Amendments

licy of insurance hereafter d holder thereof, presented the agent of such person person or corporation must, nd of payment, pay to the he policy, a sum equal to such policy, as ascertained of section 547 of the Civil e liquidation of such policy. ts 1873-4, 270; took effect

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ected at a meeting of ajority of the fixed capc; notice thereof to be aws in Article II, Chap- c stock. ransferable until all the paid in; nor is any such less at least twenty per efor, and the transfer

5456. Corporations may borrow money and issue bonds.

SEC. 456. Railroad corporations may borrow, on the credit of the corporation and under such regulations and restrictions as the directors thereof, by unanimous concurrence, may impose, such sums of money as may be necessary for constructing and completing their railroad, and may issue and dispose of bonds or promissory notes therefor, in denominations of not less than five hundred dollars, and at a rate of interest not exceeding ten per cent. per annum; and may also issue bonds or promissory notes, of the same denomination and rate of interest, in payment of any debts or contracts for constructing and completing their road, with its equipments and all else relative thereto. The amount of bonds or promissory notes issued for such purposes must not exceed, in all, the amount of their capital stock; and to secure the payment of such bonds or notes, they may mortgage their corporate property and franchise.

5457. To provide sinking fund to pay bonds.

SEC. 457. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note so issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

5458. Capital stock to be fixed.

SEC. 458. When, at any time after filing the articles of incorporation, it is ascertained that the capital stock therein set out is either more or less than actually required for constructing, equipping, operating and maintaining the road, by a two third vote of the stockholders the capital stock must be fixed, and a certificate thereof, and of the proceedings had to fix the same, must be made out and filed in the office of the secretary of state.

5459. Certificate of payment of fixed capital stock.

SEC. 459. Within thirty days after the payment of the last installment of the fixed capital stock of any railroad corporation organized under this title and part, the president and secretary and a majority of the directors thereof must make, subscribe and file in the office of the secretary of state a certificate, stating the amount of the fixed capital stock, and that the whole thereof has been paid in. The certificate must be verified by the affidavit of the president and secretary.

CHAPTER II.

ENUMERATION OF POWERS.

5465. Enumeration of powers.

SEC. 465. Every railroad corporation has power:

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents and employees may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

May accept real estate.

2. To receive, hold, take and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance and accommodation of such railroad.

May acquire real estate.

3. To purchase, or by voluntary grants or donations to receive, enter, take

possession of, hold and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots and other purposes necessary to successfully work and conduct the business of the road.

Lay out road, how wide.

4. To lay out its road, not exceeding nine rods wide, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same.

Where may construct road.

5. To construct their road across, along or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume, which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch or flume, thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise; thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise.

May cross or connect roads.

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be paid therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title VII, Part III, Code of Civil Procedure. [See post, 11, 237.]

May purchase land, timber, stone, gravel, etc.

7. To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in a manner provided in Title VII, Part III, Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation.

Carry persons and freight.

8. To carry persons and property on their railroad, and receive tolls or compensation therefor.

Erect necessary buildings.

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight, and business.

Regulate time and freights, subject to legislation.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the legislature at any time.

Regulate force and speed.

11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

5466. *Map and profile to be filed.*

SEC. 466. Every railroad corporation in this state must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the secretary of state; and also like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

5467. *May change line of road.*

SEC. 467. If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, section 465, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are of file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change. No new location, as herein provided, must be so run as to avoid any points named in their articles of incorporation.

5468. *Forfeiture of franchise.*

SEC. 468. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited.

5469. *Crossings and intersections.*

SEC. 469. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and, in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under Title VII, Part III, Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases.

5470. *Use of streets, alleys, or water, in cities or towns.*

SEC. 470. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two third vote of the town or city authority from which the right must emanate.

5471. *Railroads through cities not to charge fare to and from points therein.*

SEC. 471. No railroad corporation, other than street railroads, availing itself of the right of way from city for railroad purposes, or for the purpose of carrying passengers for a consideration, from any point to another in the same city, except such roads as are or may be built on the prismoidal or other elevated railroad plan, and chartered for street railroad purposes; provided, that such elevation shall be not less than fourteen feet above the street level. [Amendment, approved April 1, 1876; Amendments 1875-6, 76; took effect from passage. ^(a)

5472. *When crossing railroads or highways, how other lands are acquired.*

SEC. 472. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and material as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in Title VII, Part III, Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation. [See post, 11,237.]

5473. *Corporations may consolidate.*

SEC. 473. Two or more railroad corporations may consolidate their capital stock, debts, property, assets, and franchises in such manner as may be agreed upon by their respective boards of directors. No such amalgamation or consolidation must take place without the written consent of the holders of three fourths in value of all the stock of each corporation; and no such amalgamation or consolidation must in any way relieve such corporation or the stockholders thereof from any and all just liabilities. In case of such amalgamation or consolidation, due notice of the same must be given, by advertisement for one month in at least one newspaper in each county, if there be one published therein, into or through which such roads run, and also for the same length of time in one paper published in Sacramento and in two papers published in San Francisco; and when the consolidation and amalgamation is completed, a copy of the new articles of incorporation must be filed in the office of the secretary of state.

5474. *State lands granted for use of corporations.*

SEC. 474. There is granted to every railroad corporation the right of way for the location, construction, and maintenance of their necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the state not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, not in any case to exceed two hundred feet in width.

5475. *Grant not to embrace town lots.*

SEC. 475. The grants mentioned in the preceding section do not apply to public lands of the state within the corporate limits of towns and cities, or within three miles thereof.

5476. *Wood, stone and earth may be taken from state lands.*

SEC. 476. The right to take from any of the lands belonging to the state,

(a) Original section:

SEC. 471. No railroad corporation, other than street railroads, availing itself of the provisions of the preceding section and acquiring right of way from city

authorities, must ever use their road for street railroad purposes, or for the purpose of carrying passengers for a consideration from any point to another in the same city.

adjacent to the works of the corporation, all materials, such as wood, stone and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of its works and adjuncts, is granted to such corporations.

5477. *Lands to revert to state, when.*

SEC. 477. If any corporation receiving state lands or appurtenances thereunder is dissolved, ceases to exist, is discontinued, or the route or line of its works is so changed as not to cover or cross the lands selected, or the use of the lands selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state or its grantees, free from all such uses.

5478. *Selections made, how proved and certified to.*

SEC. 478. When any selection of the right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof must transmit to the surveyor-general, controller of state and recorder of the county in which the selected lands are situate, a plat of the lands so selected, giving the extent thereof and uses for which the same is claimed or desired, duly verified to be correct; and, if approved, the surveyor-general must so indorse the plat, and issue to the corporation a permit to use the same, unless, on petition properly presented to the court, a review is had and such use prohibited.

CHAPTER III.

BUSINESS, HOW CONDUCTED.

5479. *Checks to be affixed to all baggage.*

SEC. 479. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

5480. *Annual report to be verified.*

SEC. 480. Every railroad corporation must make an annual report to the secretary of state, or other officer designated by law, of its operations for each year, ending on the thirty-first day of December, verified by the oaths of the president or acting superintendent of operations, the secretary and treasurer of such corporation, and file it in the office of the secretary of state, or such other designated officer, by the twentieth day of February, which must state:

1. The capital stock, and the amount thereof actually paid in;
2. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and cars, respectively;
3. The amount and nature of its indebtedness, and the amount due the corporation;
4. The amount received from the transportation of passengers, property, mails, and express matter, and from other sources;
5. The amount of freight, specifying the quantity in tons;
6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road;
7. The number and amount of dividends, and when paid;

8. The number of engine houses and shops, of engines and cars, and their character.

5481. *Duties of corporation.*

SEC. 481. Every such corporation must start and run their cars, for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation, at the place of starting, at the junction of other railroads, and at siding and stopping places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

5482. *Corporation to pay damages for refusal.*

SEC. 482. In case of refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

5483. *Inside room for passengers, etc.—Passengers on freight cars.*

SEC. 483. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

5484. *Printed rules and regulations.*

SEC. 484. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

5485. *Fences—Damages.*

SEC. 485. Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track and property. In case they do not make and maintain such fence, if their engine or cars shall kill or maim any cattle or other domestic animals upon their line of road which passes through or along the property of the owner thereof, they must pay to the owner of such cattle or other domestic animals a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Railroad corporations paying to the owner of the land through or along which their road is located an agreed price for making and maintaining such fence, or paying the cost of such fence with the award of damages allowed for the right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damage or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the non-construction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employees.

5486. *Bell and other regulations of trains.*

SEC. 486. A bell, of at least twenty pounds weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with.

5487. *Passenger refusing to pay fare.*

SEC. 487. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping-place, or near any dwelling-house, on stopping the train.

5488. *Officers to wear badge.*

SEC. 488. Every conductor, baggage master, engineer, brakeman, or other employee of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge, indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employee, without such badge, has any authority to meddle or interfere with any passenger or property.

5489. *Rates of charges.*

SEC. 489. All railroad corporations must fix and publish their rates of charges for freightage and fares from one depot to another, on their various lines of road in this state, graduated as follows:

1. One rate of charges per mile for a distance of one hundred miles or over;
2. One rate for a distance of seventy five and less than one hundred miles, charging not exceeding ten per cent. per mile more than the first rate.
3. One rate for a distance of fifty and less than seventy-five miles, charging not exceeding fifteen per cent. per mile more than the first rate;
4. One rate for a distance of twenty-five and less than fifty miles, charging not exceeding twenty per cent. per mile more than the first rate;
5. One rate for a distance not exceeding twenty-five miles, charging not exceeding twenty-five per cent. per mile more than the first rate.

But in no case, nor in any class of charges hereinbefore named, shall any railroad corporation charge or receive more than ten cents per mile for each passenger, nor fifteen cents per mile for each ton of freight transported on its road. For every transgression of these limitations the corporation is liable, to the party suffering thereby, treble the entire amount of fare or freightage so charged to such party. In no case is the corporation required to receive less than twenty-five cents for any one lot of freight for any distance.

5490. *Passenger tickets, how issued, and to be good for six months.*

SEC. 490. Every railroad corporation must provide, and, on being tendered the fare therefor fixed as provided in the preceding section, furnish to every person desiring a passage on their passenger cars a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from

the depot or station where the same is purchased to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

5491. Character of iron rail to be used.

SEC. 491. All railroads, other than street railroads and those used exclusively for carrying freight or for mining purposes, built by corporations organized under this chapter, must be constructed of the best quality of iron or steel rails, known as the T or H rail, or other pattern of equal utility. [*Amendment, approved March 30, 1874; Amendments 1873-4, 212; took effect July 1, 1874.*^(a)]

An Act to provide for the appointment of commissioners of transportation, to fix the maximum charges for freights and fares, and to prevent extortion and discrimination on railroads in this state.

Approved April 3, 1876; 1875-C, 783.

CHAPTER ONE.

Governor to appoint three commissioners.

SECTION 1. On or before the fifteenth day of May, eighteen hundred and seventy-six, the governor shall appoint three competent persons, to be styled commissioners of transportation, who shall hold office for the period of two years and until their successors are appointed and qualified. The persons who are so appointed shall have no official connection with, nor be in the employ of any railroad corporation or company, nor shall they, during their term of office, own or be interested in the stock, bonds or other property thereof. Said commissioners shall have their office in the state capitol building, at Sacramento.

Oath and bond of commissioners.

SEC. 2. Before entering upon the discharge of the duties of their office, each of said commissioners shall take an oath or affirmation to support the constitution of the United States and of this state, and to faithfully and honestly discharge his duty as such commissioner, and that he is not an officer, stockholder or employee of any railroad, or in any way interested therein, or a stockholder, officer or employee, or in any way interested in any express or freight company doing business on any of the railroads in the United States, and the said commissioners shall be citizens of this state; they shall each execute and file with the secretary of state an official bond, with good and sufficient sureties, to be approved by the governor, in the penal sum of ten thousand dollars, conditioned for the faithful performance of their duties under this act.

Salaries.

SEC. 3. The salary of each commissioner shall be three thousand dollars per annum, to be paid by the State of California in the same manner as the salary of other state officers are paid. They shall have power to elect one of their number president of said board, to employ a secretary at a salary of not exceeding eighteen hundred dollars per annum, and shall be allowed a contingent fund of not exceeding twenty-five dollars per month to defray the necessary expenses of fuel and stationery; the commissioners and their secretary shall be transported, in the discharge of their duties, over the various railroads owned by corporations within this state, free of charge.

(a) The original section did not have the words "or steel."

Commissioners to examine roads, bridges, etc., and report needed repairs.

SEC. 4. It shall be the duty of such commissioners, whenever they shall deem it necessary, to inspect all railroads, operated by steam power, within this state, and to examine the same with reference to the security and accommodation of the public; and if, on such examination, in their opinion any of the tracks, bridges or other structures or works thereof, are unfit for the transportation of passengers with reasonable safety, it shall be their duty to give to the superintendent, or other executive officer of the company working or operating said defective track, bridge or other structure, notice of the condition thereof and the repairs necessary to place the same in a safe condition; and if any superintendent, or other executive officer aforesaid, receiving such notice and order, shall willfully neglect to commence repairing the same for the period of two days after receiving such notice and order, such superintendent or other executive officer, shall be deemed guilty of a misdemeanor.

Petitions for stations, side-tracks, etc.

SEC. 5. Whenever a petition, signed in good faith by fifty or more property-holders residing within ten miles of any proposed station, switch or side-track, shall be presented to the commissioners, praying for the establishment of a new station, switch or side-track, the commissioners shall notify the managers of such railroad of such petition, and appoint a time and place for hearing the same. Should the corporation neglect or refuse to comply with the award of the commissioners, it shall forfeit the sum of one hundred dollars per day from the time fixed by the commissioners for the completion of the work required, until such work shall be actually completed, to be recovered to the use of the state by suit instituted by said commissioners in any court of competent jurisdiction; provided, that said commissioners shall not require such new station, switch or side-track to be established within less than six miles of one already established.

Statement of rates of freight and fare.

SEC. 6. Within thirty days after the appointment of said commissioners, they shall cause a copy of this act to be served upon every such railroad corporation engaged in the business of transportation within this state; within ten days after the receipt of such notice, it shall be the duty of such corporation respectively to file with the commissioners, and in the office of the secretary of state, and in the office of the county clerk of each county in which the road is located, a copy, verified by the oath or affirmation of the president, or other chief executive officer, of all and singular the tariffs and rates of freight, passage money, commutation rates and charges, together with copies of all their rules, regulations and instructions to employees, concerning the carriage of persons and merchandise, under which the road was being operated on the first day of January, eighteen hundred and seventy-six; and it shall not be lawful for any of said corporations to increase any rates of freight or passage, or to raise the classification of any species of goods, or to change any rule or instruction to employees in such manner as to increase the cost of transportation over and above the rates charged in such tariff or in use on the first day of January, eighteen hundred and seventy-six; provided, nevertheless, that any such railroad company may issue excursion tickets at reduced rates, for special trains, or between certain places, and for a fixed time.

Railroad companies to furnish information to commissioners.

SEC. 7. The several transportation companies or corporations operating any railroad in this state, the cars on which are propelled by steam, shall at all times, on demand, furnish to the commissioners any and all information required of them, concerning the condition, management, and operation of the

railroads under their control respectively, and particularly with copies of all leases, contracts, and agreements for transportation with express companies or otherwise, to which they are parties. The commissioners shall cause blanks to be prepared proposing questions calculated to elicit facts and statistics, from which may be deduced the results hereinafter specified as necessary to be accurately known by the people and the legislature; such blanks shall be furnished to the several corporations in season to be filled in and returned to the commissioners on or before the first day of October of each year. They shall be sworn to by the president or other executive officer, and by the auditor, secretary, or principal bookkeeper of the corporation making the same, respectively. They shall be tabulated by the commissioners, and the reports, together with the tabulations thereof and the deductions therefrom, and the record of all the matters herein required to be reported to the legislature, with the drafts of all such bills as the commissioners desire to recommend for passage, shall be submitted to the legislature on the first day of the next session thereof.

Annual reports of companies must state.

SEC. 8. It is hereby made the duty of the president, or other executive officer, in charge of each and every railroad company having a line of railroad in this state, to make an annual report to the commissioners for the year ending on the thirtieth day of June preceding, which report shall state:

Stock and debts.

1. The amount of capital stock paid in.
2. The amount of capital stock unpaid.
3. The amount of funded debt.
4. The amount of floating debt.

Cost of road and equipments.

5. Cost of construction.
6. Cost of right of way.
7. Cost of equipment.
8. All other items embraced in cost of road and equipments, not embraced in the preceding schedule.

Characteristics of road.

9. Length of single main track laid with iron or steel.
10. Length of double main track.
11. Length of branches, stating whether they have single or double track.
12. Aggregate length of sidings and other tracks not above enumerated; total length of iron embraced in preceding heads.
13. Maximum grade, with its length in main road, and also in branches.
14. The shortest radius of curvature and locality of each curve, with length of curve in main road, and also in branches.
15. Total degrees of curvature in main road, and also in branches.
16. Total length of straight line in main road, and also branches.
17. Number of wooden bridges, and aggregate length in feet.
18. Number of iron bridges, and aggregate length in feet.
19. Number of stone bridges, and aggregate length in feet.
20. Number of wooden trestles, and aggregate length in feet.
21. The greatest age of wooden bridges.
22. The average age of wooden bridges.
23. The greatest age of wooden trestles.
24. The number and kind of new bridges built during the year, and length in feet.
25. The length of road unfenced on either side, and the reason therefor.

26. Number of engines.
27. Number of passenger cars.
28. Number of express and baggage cars.
29. Number of freight cars.
30. Number of other cars.
31. The highest rate of speed allowed by express passenger trains when in motion.
32. The highest rate of speed allowed by mail and accommodation trains when in motion.
33. The highest rate of speed allowed by freight trains when in motion.
34. The rate of fare for through passengers charged for the respective classes per mile.
35. The rate of fare for local passengers charged for the respective classes per mile.
36. The highest rate per ton per mile charged for the transportation of the various classes of through freight.
37. The highest rate per ton per mile charged for the transportation of the various classes of local freight.

Doings of the year.

38. The length of new iron or steel laid during the year.
39. The length of re-rolled iron laid during the year.
40. The number of miles run by passenger trains.
41. The number of miles run by freight trains.
42. The number of through passengers carried in cars.
43. The number of local passengers carried in cars.
44. The number of tons of through freight carried.
45. The number of tons of local freight carried.

Earnings for the year.

46. From transportation of through passengers.
47. From transportation of local passengers.
48. From transportation of through freight.
49. From transportation of local freight.
50. From mail and express.
51. From all other sources; total earnings for the year.

Expenditures for the year.

52. For construction and new equipment.
53. For maintenance of way and structures.
54. For transportation expenses, including those of stations and trains.
55. For dividends: rate per cent. and amount.
- 56, 57, 58, 59, 60. All other expenditures.
61. Total expenditures during the year.
62. The number and kind of farm animals killed, and amount of damages paid therefor.
63. A statement of all casualties resulting in injuries to persons, and the extent and cause thereof; and such other and further information as may be required by the commissioners.

Penalty for neglect to comply.

SEC. 9. Any transportation company, subject to the provisions of this act, which shall neglect or refuse to make and file its report, as provided in section eight of this act, or shall neglect or refuse to file its tariffs of freights and fares with the commissioners, as provided in section six of this act, shall forfeit and pay to the State of California the sum of not less than one hundred nor more

than one thousand dollars for each and every day of such neglect or refusal, the same to be recovered by suit in any court of competent jurisdiction.

Prosecution.

SEC. 10. All prosecutions against any transportation company, railroad company, or any officer or employee thereof, for forfeitures, penalties, or fines, for the violation of any of the laws relating to said companies or roads, shall be by action in the name of the people of the State of California, and it shall be the duty of such commissioners to bring in any court of competent jurisdiction all such actions.

Commissioners may examine books of companies.

SEC. 11. Each commissioner shall have power, thereunto authorized by the board, to examine the books and papers of any railroad corporation or line, and, also, any railroad officer, agent, or employee, under oath, concerning the condition, management, and operation of the railroads under their direction and control; and it is hereby made the duty of the superintendent of each transportation and railroad company in the state to notify said commissioners, by telegraph, of all accidents, immediately upon their occurrence.

Commissioners may fix route in cities and towns.

SEC. 12. Whenever the directors of any railroad company shall fail to agree with the municipal authorities of any town or city, as to the route of their railroad in any such town or city, either party may petition the commissioners of transportation to fix the route in said town or city, and said commissioners, after due notice to the other party, shall hear the case, and fix the route in such town or city.

Certain cases to be decided by commissioners.

SEC. 13. It shall be the duty of the commissioners of transportation, upon the petition of either party, after twenty days' notice to the other, to hear and decide the following cases: The compensation to be paid by one railroad to another for transporting passengers, merchandise, and cars. To fix such periods and time-tables, having reference to the convenience and interest of the corporation, and the public to be accommodated thereby. To determine what accommodations are required; and, also, the compensation to be paid for the use of terminal accommodations, and for the receiving, transferring, and forwarding of passengers and freight.

Awards of commissioners to be binding.

SEC. 14. Any award made by the commissioners of transportation shall be binding upon the respective corporations and parties interested therein, until the same shall have been revised or altered by said commissioners, or reversed on appeal to the supreme court, as hereinafter provided.

Awards subject to revision.

SEC. 15. Any award made by the commissioners of transportation shall be returnable, with the evidence, on the request, in writing, of any party affected thereby, and filed, within thirty days after rendering of such award, in the county court of the county in which the controversy arose, and shall be there subject to revision, in the same manner as if the said commissioners had derived their power to act in the premises under the appointment of said court, with the right of appeal to the supreme court, as in other cases.

Suits to recover penalties.

SEC. 16. It shall be the duty of the district attorneys of the several counties within, into, or through which any railroad runs, or is located, or worked, upon being instructed by said commissioners, to sue for and recover all penalties for the violation of the railroad laws of this state.

Class of railroads liable.

SEC. 17. The provisions of this act shall be applicable to railroads, the cars of which are propelled by steam, now or hereafter to be operated by corporations, trustees, companies, or individuals, in this state.

Printing of report.

SEC. 18. There shall be printed two thousand five hundred copies of the report of the commissioners of transportation.

Governor may remove commissioners.

SEC. 19. The governor shall remove the commissioners of transportation at any time, when he becomes satisfied that it is for the public good.

CHAPTER II.—OF EXTORTION AND DISCRIMINATION.

Extortion defined.

SECTION 1. A railroad company shall be deemed guilty of extortion in the following cases:

1. When it shall knowingly or willfully charge, demand, or receive from any passenger, as his fare from one station or place to another, any greater sum than is specified as the fare between such stations or places, for the same class of passage and in the same direction, in its tariff of fares on file with the board of transportation commissioners;

2. When it shall knowingly or willfully charge, demand, or receive from any person or persons, as the rate of freight on goods or merchandise, any greater sum than is specified as the rates for the like quantity of goods or merchandise of the same class, between the same places and in the same direction, in its printed tariff of freights on file with said commissioners;

3. When it shall knowingly or willfully charge, collect, or receive from any person or persons, a greater amount of rate of toll or compensation than it shall at the same time charge, collect, or receive from any other persons for receiving, handling, storing, or delivering freight of the same class and like quantity, at the same place;

4. When it shall knowingly or willfully charge, demand, or receive from any person or persons, any greater sum for passage or freight than from any other person or persons, at the same time, between the same places, in the same direction, for the same class of passage, or for the like quantity of goods of the same class;

5. When it shall knowingly or willfully charge, demand, or receive as compensation for receiving, storing, handling, or delivering, or for transporting any lot of goods or merchandise, any greater sum than it shall, by or through any of its authorized agents, wherever situated, have agreed to charge for such service previously to the performance thereof.

Unjust discrimination defined.

SEC. 2. A railroad company shall be deemed guilty of unjust discrimination in the following cases:

1. When it shall directly, knowingly, or willfully charge, demand, or receive from any person or persons, any less sum for passage or freight than from any other person or persons (except as in this act hereinafter provided), at the same time, between the same places, and in the same direction, for the like class of passage, or for the like quantity of goods of the same class;

2. When it shall, directly or indirectly, knowingly or willfully charge, demand, or receive from any person or persons, as compensation for receiving, handling, storing, or delivering any lot of goods or merchandise, any less sum than it shall charge, collect, or receive from any other person or persons, for

the like service, to a like quantity of goods of the same class, at the same place.

Free passes.

SEC. 3. It shall be unlawful for any such railroad company to grant free passes for travel within this state, except to the following persons:

1. Directors, officers, agents, and employees of the company, and their families;

2. Officers and agents and railroad contractors of other railroads or telegraph companies;

3. Destitute persons;

4. The members of the board of transportation, commissioners of the State of California, their secretary, attorney, and employees, while traveling in the discharge of their official duties;

5. Public messengers, troops, and other persons, who are, under existing laws or any contract of such railroad company with this state, to be transported free of charge.

Every such railroad company shall keep a record of all free passes issued by it, except such as are issued by it to officers, agents, employees, and their families, and of the several classes thereof, and of the number of times each pass shall be used, and shall report the same to the transportation commissioners whenever required.

Penalty for extortion.

SEC. 4. If any such railroad company shall be guilty of extortion, as defined in this act, it shall forfeit and pay to the person or persons aggrieved three times the amount of the damages sustained by him or them, together with the costs of suit, to be recovered in any court of competent jurisdiction. It shall be the duty of the board of transportation commissioners to prosecute all such suits for the plaintiff.

Penalty for discrimination.

SEC. 5. If any such railroad company shall be guilty of unjust discrimination, as defined in section two of this chapter, it shall forfeit and pay the sum of one thousand dollars for each offense, to be recovered on complaint of the board of transportation commissioners, as in the last section provided. All forfeitures under this section shall be paid into the state treasury for the benefit of the public schools of the state.

Penalty for unlawful issue of passes.

SEC. 6. Any such railroad company that issues free passes to any person or persons other than those specified in section three of this chapter, or shall permit any person whatever to travel free upon their cars, except upon the exhibition of free passes issued as provided in said section, shall forfeit and pay for each offense the sum of one hundred dollars, to be recovered and paid over, one half to the state treasurer, and the other half to the informer, as in the last section provided.

Prosecutions for violation.

SEC. 7. Whenever it shall come to the knowledge of the board of transportation commissioners that the provisions of this act are violated by any such railroad corporation in this state, it shall be their duty to investigate the charge; and whenever, in their judgment, the facts warrant prosecution, it shall be their duty to immediately cause suits to be commenced and prosecuted against any such corporation which shall have been guilty of such violation. Such suits may be brought in any court of competent jurisdiction. All such suits shall be prosecuted by the district attorney of the county where such action is brought.

Stop-over tickets.

SEC. 8. Any person traveling upon any such railroad in this state, desiring to stop over at any station between the point of his departure and destination, shall, upon request, be entitled to receive from the conductor of the train, without further charge thereon, a stop-over ticket, which shall be good for the remainder of his journey, and may be used at any time within six months after it shall have been issued.

Act, how applied.

SEC. 9. The provisions of this act shall be deemed applicable to such railroads as herein mentioned, whether operated by corporations, trustees, or owner or owners not incorporated.

SEC. 10. This act shall take effect and be in force from and after its passage.

TITLE IV.

Street Railroad Corporations.

5497. *Authority to lay street railroad track, how obtained.*

SEC. 497. Authority to lay railroad tracks through the streets and public highways of any incorporated city or town may be obtained, for a term of years not exceeding fifty, from the trustees, council, or other body to whom is intrusted the government of the city or town, under such restrictions and limitations, and upon such terms and payment of license tax, as the city or town authority may provide. In no case must permission be granted to propel cars upon such tracks otherwise than by horses, mules, or by wire ropes running under the streets and moved by stationary steam engines, unless for special reasons, as hereinafter provided. [*Amendment, approved March 3, 1876; Amendments 1875-6, 76; took effect from passage.*^(a)

5498. *Conditions, on grant of right of way.*

SEC. 498. The city or town authorities, in granting the right of way to street railroad corporations, in addition to the restrictions which they are authorized to impose, must require a strict compliance with the following conditions, except in the cases of prismoidal or other elevated railways. In such cases said railway shall be required to be constructed in such a manner as will present the least obstruction to the freedom of the streets on which it may be erected, when allowed by the granting power:

1. To construct their tracks on those portions of streets designated in the ordinance granting the right, which must be as nearly as possible in the middle thereof;

2. To plank, pave, or macadamize the entire length of the street used by their track, between the rails, and for two feet on each side thereof, and between the tracks, if there be more than one, and to keep the same constantly in repair, flush with the street, and with good crossings;

3. That the tracks must not be more than five feet wide within the rails, and must have a space between them sufficient to allow the cars to pass each other freely. [*Amendment, approved April 3, 1876; Amendments 1875-6, 77; took effect from passage.*^(b)

(a) The original section did not have the words "or by wire ropes running under the streets, and moved by stationary steam engines."

(b) The original section did not have the words "except in the cases of prismoidal or other elevated railways. In such cases said railway shall be required to be constructed in such a manner as will present the least obstruction to the freedom of the street on which it may be erected, when allowed by the granting power;"

nor the words, in the second subdivision, "and between the tracks, if there be more than one." The third subdivision did not have the words "must have," and read "between the track" instead of "between them."

It was previously amended by act of March 30, 1874; Amendments 1873-4, 212, so as to read like the amendment in the text except that it did not have the words first above quoted, commencing with "except."

5499. *Two corporations may use the same track.*

SEC. 499. Two corporations may be permitted to use the same street, each paying an equal portion for the construction of the track; but in no case must two railroad corporations occupy and use the same street or track for a distance of more than five blocks.

5500. *Crossing tracks.*

SEC. 500. Any proposed railroad track may be permitted to cross any track already constructed, the crossing being made as provided in Chapter II, Title III, of this Part. In laying down the track and preparing therefor, not more than one block must be obstructed at any one time, nor for a longer period than ten working days.

5501. *Rules of fare, speed, etc.*

SEC. 501. The rates of fare on the cars must not exceed ten cents for one fare, for any distance under three miles. The cars must be of the most approved construction for comfort and convenience of passengers, and provided with brakes to stop the same, when required. The rate of speed must not be greater than eight miles per hour. A violation of the provisions of this section subjects the corporation to a fine of one hundred dollars for each offense.

5502. *Time allowed for completion of work of laying down track.*

SEC. 502. Work to construct the railroad must be commenced within one year from the date of the ordinance granting the right of way and the filing of articles of incorporation, and the same must be completed within three years thereafter. A failure to comply with these provisions works a forfeiture of the right of way as well as of the franchise, unless the uncompleted portion is abandoned by the corporation, with the consent of the authorities granting the right of way—such abandonment and consent to be in writing.

5503. *May make further regulations and rules.*

SEC. 503. Cities and towns in or through which street railroads run may make such further regulations for the government of such street railroads as may be necessary to a full enjoyment of the franchise and the enforcement of the conditions provided herein.

5504. *Penalty for overcharging.*

SEC. 504. Any corporation, or agent or employee thereof, demanding or charging a greater sum of money for fare on the cars of such street railroad than that fixed, as provided in this title, forfeits to the person from whom such sum is received, or who is thus overcharged, the sum of two hundred dollars, to be recovered in a civil action, in any justice's court having jurisdiction thereof, against the corporation.

5505. *To provide and furnish passenger tickets.*

SEC. 505. Every street railroad corporation must provide, and, on request, furnish to all persons desiring a passage on its cars, any required quantity of passenger tickets or checks, each to be good for one ride. Any corporation failing to provide and furnish tickets or checks to any person desiring to purchase the same at not exceeding the rate hereinbefore prescribed, shall forfeit to such person the sum of two hundred dollars, to be recovered as provided in the preceding section. [*Amendment, approved March 30, 1874; Amendments 1873-4, 213; took effect July 1, 1874.*^(a)]

5506. *Prima facie evidence of agency.*

SEC. 506. Upon the trial of an action for any of the sums forfeited, as pro-

^(a) The original section had "so" before the second "provide," and instead of "prescribed, shall forfeit" had "fixed, must pay."

vided in the two preceding sections, proof that the person demanding or receiving the money as fare, or for the sale of the ticket or check, was at the time of making the demand or receiving the money, engaged in an office of the corporation, or vehicle belonging to the corporation, shall be prima facie evidence that such person was the agent, servant, or employee of the corporation, to receive the money and give the ticket or check mentioned. [*Amendment, approved March 30, 1874; Amendments 1873-4, 213; took effect July 1, 1874.*^(a)]

5507. Rights reserved to city or town.

SEC. 507. In every grant to construct street railroads, the right to grade, sewer, pave, macadamize, or otherwise improve, alter, or repair the streets or highways, is reserved to the corporation, and cannot be alienated or impaired; such work to be done so as to obstruct the railroad as little as possible; and, if required, the corporation must shift its rails so as to avoid the obstructions made thereby. [*Amendment, approved March 30, 1874; Amendments 1873-4, 214; took effect July 1, 1874.*^(b)]

5508. License to be paid to city or town.

SEC. 508. Each street railroad corporation must pay to the authorities of the city, town, county, or city and county, as a license upon each car, such sum as the authorities may fix, not exceeding fifty dollars per annum in the city of San Francisco, nor more than twenty-five dollars per annum in other cities or towns. Where any street railroad connects or runs through two or more cities or towns, a proportionate or equal share of such license tax must be paid to each of the cities or towns; and no such license tax is due the county authorities where the same is paid to any city or town authority.

5509. Track for grading purposes.

SEC. 509. The right to lay down a track for grading purposes, and maintain the same for a period not to exceed three years, may be granted by the corporate authorities of any city or town, or city and county, or supervisors of any city or county, but no such track must remain more than three years upon any one street; and it must be laid level with the street, and must be operated under such restrictions as not to interfere with the use of the street by the public. The corporate authorities of any city or town, or city and county, may grant the right to use steam or any other motive power in propelling the cars used on such grading track, when public convenience or utility demands it, but the reasons therefor must be set forth in the ordinance, and the right to rescind the ordinance at any time reserved.

5510. What provisions of Title III are applicable to street railroads.

SEC. 510. Street railroads are governed by the provisions of Title III of this Part, so far as they are applicable, unless such railroads are therein specially excepted. [*Amendment, approved March 30, 1874; Amendments 1873-4, 214; took effect July 1, 1874.*^(c)]

5511. Title applicable to natural persons alike with corporations.

SEC. 511. When a street railroad is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

(a) Original section:

SEC. 506. Upon the trial of any action for the forfeiture named in the two preceding sections, proof that the person demanding or receiving such sum of money as fare, or for the sale of such ticket or check, was, at the time of making such demand or receiving such moneys, engaged on or at any car, omnibus, or vehicle of any railroad belonging to such corporation, is primary evidence that such person so demanding or receiving such moneys was the agent, servant, or employee of the corporation so owning, using or employing such railroad.

(b) Original section:

SEC. 507. Every city, town, or city and county, grant-

ing the right to construct street railroads within its limits, must reserve the right to grade, sewer, pave, macadamize or otherwise improve, alter, or repair the streets or highways permitted to be used by the corporation, the work to be so done by the city or town as to obstruct the railroad as little as possible, and when such works make the same necessary, the corporation must shift its rails so as to avoid the obstructions made thereby.

(c) Original section:

SEC. 510. All the provisions of Title III of this Part are applicable to street railroads, unless where street railroads are therein specially excepted, or the provisions are palpably inapplicable.

TITLE V.

Wagon Road Corporations.**5512.** *Three commissioners to act with surveyor.*

SEC. 512. Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows:

Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of supervisors of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the supervisors, as provided in the succeeding section. [*Amendment, approved March 30, 1874; Amendments 1873-4, 214; took effect July 1, 1874.*^(a)]

5513. *Survey and map to be filed and approved by supervisors.*

SEC. 513. When the route is surveyed, a map thereof must be submitted to and filed with the board of supervisors of each county through or into which the road runs, giving its general course and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highway so taken and used as to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over and by its road, and its toll gates, as not to hinder or obstruct the use of the same.

5514. *Tolls, etc., to be collected.*

SEC. 514. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate, except that in the counties of Klamath, Butte, Del Norte, Plumas, Humboldt and Sierra, the directors may fix their own tolls; but in no case must the tolls be more than sufficient to pay fifteen per cent. nor less than ten per cent. per annum on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges or ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise and must pay to the party so charged one hundred dollars as liquidated damages. [*Amendment, approved March 28, 1874; Amendments 1873-4, 272; took effect sixtieth day after passage.*^(b)]

5515. *No tolls to be charged on highways or public roads.*

SEC. 515. When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

(a) The original section did not have the first clause down to and including the words "as follows." After the last "supervisors" it had the words "who appointed them."

(b) The original section, in addition to the counties named above, had also "Trinity, Shasta," and "Siskiyou."

It was amended by act of March 30, 1874 (Amendments 1873-4, 211), so as to restrict the tolls in the

specified counties to "fifteen per cent. per annum of the amount invested in the construction of its road, including therein the cost of its bridges and ferries, and a dividend among the stockholders equal to twelve per cent. per annum upon the amount so invested," etc. But this amendment, by operation of section 287 of the amendatory act (Amendments 1873-4, 269; post, 8180), seems never to have taken effect.

5516. *Rates of toll to be posted at gate.*

SEC. 516. The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll levied and demanded.

5517. *Toll gatherer may detain persons until they pay toll.*

SEC. 517. Each toll gatherer may prevent from passing through his gate persons leading or driving animals or vehicles subject to toll, until they shall have paid, respectively, the tolls authorized to be collected.

5518. *Toll gatherer not to detain any person unnecessarily.*

SEC. 518. Every toll gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved.

5519. *Persons avoiding tolls to pay five dollars.*

SEC. 519. Every person who, to avoid the payment of the legal toll, with his team, vehicle, or horse, turns out of a wagon, turnpike, or plank road, or passes any gate thereon on ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

5520. *Penalties for trespasses on property of corporation.*

SEC. 520. Every person who:

1. Willfully breaks, cuts down, defaces or injures any mile stone or post on any wagon, turnpike, or plank road; or,
2. Willfully breaks or throws down any gate on such road; or,
3. Digs up or injures any part of such road or anything thereunto belonging; or,
4. Forceibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

5521. *Revenue, how to be appropriated.*

SEC. 521. The entire revenue from the road shall be appropriated: first, to repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and, second, to the payment of the dividend among its stockholders, as provided in section five hundred and fourteen. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay said dividend, and incidental expenses, and to keep the road in good repair. [*Amendment, approved March 30, 1874; Amendments 1873-4, 215; took effect July 1, 1874.*^(a)]

5522. *May mortgage and hypothecate corporate property.*

SEC. 522. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair their road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent. of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two thirds of the capital stock subscribed.

(a) Original section:

SEC. 521. The entire revenue derived from the road shall be appropriated: first, to repayment to the corporation the costs of its construction, with fifteen per cent. per annum interest thereon, together with the incidental expenses incurred in collecting tolls and keeping the road in repair. When the repayment is completed, the tolls must be so reduced as to raise no

more than an amount sufficient to pay incidental expenses and to keep the road in good repair.

The amendment in the text was evidently drawn in conjunction with and refers to the amendment in the same act of section 514. That amendment seems to have been superseded and in fact never to have taken effect. See note to section 514, ante, 5514.

5523. *This title applies to natural persons as well as corporations.*

SEC. 523. When a wagon, turnpike, or plank road is constructed, owned, or operated by any natural person, this title is applicable to such person in like manner as it is applicable to corporations.

TITLE VI.

Bridge, Ferry, Wharf, Chute, and Pier Corporations.

5528. *Corporation to obtain license from supervisors.*

SEC. 528. No corporation must construct, or take tolls on, a bridge, ferry, wharf, chute, or pier until authority is granted therefor by the supervisors.

5529. *In what contingencies corporate existence ceases.*

SEC. 529. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors; and if within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or pier, and actually expended thereon at least ten per cent. of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases, for a like term consecutively, to perform the duties imposed by law.

5530. *President and secretary to make annual report, and what to contain.*

SEC. 530. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation, must annually, under oath, report to the board of supervisors of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for their bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of their capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business of the corporation as the board of supervisors may require.

This report the president and secretary must cause to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors. A failure to make such report subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure, an additional penalty of fifty dollars; payable in each case to the county from which the authority of the corporation was derived. All such cases must be reported by the board of supervisors to the district attorney, who must commence an action therefor.

5531. *This title to apply to natural persons alike with corporations.*

SEC. 531. When a bridge, ferry, wharf, chute, or pier is constructed, operated, or owned by a natural person, this title is applicable to such person in like manner as it is applicable to corporations.

TITLE VII.

Telegraph Corporations.

5536. *May use right of way along waters, roads, and highways.*

SEC. 536. Telegraph corporations may construct lines of telegraph along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

[For an act to facilitate telegraphic communication between America and Asia, approved February 13, 1874, see 1873-4, 97.]

5537. *Persons liable for damages for injuring telegraph property.*

SEC. 537. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures, or destroys the subaqueous cable of a telegraph corporation, subjects its owner to the damages hereinbefore specified.

5538. *Party guilty of willful and malicious injury, liable to one hundred times actual damages.*

SEC. 538. Any person who willfully and maliciously does any injury to any telegraph property mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

5539. *Conditions on which damage to subaqueous cable may be recovered.*

SEC. 539. No telegraph corporation can recover damages for the breaking or injury of any subaqueous telegraph cable, unless such corporation has previously erected, on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable.

5540. *May dispose of certain rights.*

SEC. 540. Any telegraph corporation may at any time, with the consent of the persons holding two thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

[SEC. 541^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 216; took effect July 1, 1874.]

(a) Repealed section:

SEC. 541. Every telegraph corporation must fix uniform rates of charges for transmitting messages proportionate to the number of miles the same are sent,

which must be uniform throughout the state, and publish them by posting such rates at each of their offices in use.

TITLE VIII.

Water and Canal Corporations.

5548. *Corporation may obtain contract to supply city or town.*

SEC. 548. No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years.

5549. *Duties of water corporations.*

SEC. 549. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The rates to be charged for water must be determined by commissioners, to be selected as follows: two by the city and county, or city or town authorities, or when there are no city or town authorities, by the board of supervisors of the county, and two by the water company; and in case a majority cannot agree to the valuation, the four commissioners must choose a fifth commissioner; if they cannot agree upon a fifth, then the county judge of the county must appoint such fifth person. The decision of the majority of the commissioners shall determine the rates to be charged for water for one year, and until new rates are established. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state. [*Amendment, approved March 30, 1874; Amendments 1873-4, 216; took effect July 1, 1874.*^(a)]

5550. *Right to use streets, ways, alleys, and roads.*

SEC. 550. Any corporation created under the provisions of this part, for the purposes named in this title, subject to the reasonable direction of the board of supervisors, or city or town authorities, as to the mode and manner of using such right of way, may use so much of the streets, ways, and alleys in any town, city, or city and county, or any public road therein, as may be necessary for laying pipes for conducting water into any such town, city, or city and county, or through or into any part thereof.

5551. *To build and keep bridges in repair.*

SEC. 551. Every water or canal corporation must construct and keep in good repair, at all times, for public use, across their canal, flume, or water pipe, all of the bridges that the board of supervisors of the county in which such canal is situated may require, the bridges being on the lines of public highways and necessary for public uses in connection with such highways; and all water-works must be so laid and constructed as not to obstruct public highways.

5552. *Right to water to irrigate lands sold by water or irrigating company.*

SEC. 552. Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands which said corporation has sold, the right to

(a) The original section did not have the words "or of supervisors of the county." In place of "a majority" when there are no city or town authorities by the board it had "they."

the flow and use of said water is and shall remain a perpetual easement to the land so sold, at such rates and terms as may be established by said corporation in pursuance of law. And whenever any person who is cultivating land on the line and within the flow of any ditch owned by such corporation, has been furnished water by it with which to irrigate his land, such person shall be entitled to the continued use of said water, upon the same terms as those who have purchased their land of the corporation. [*New section, approved April 3, 1876; Amendments 1875-6, 77; took effect from passage.*]

TITLE IX.

Homestead Corporations.**5557.** *Time of corporate existence.*

SEC. 557. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

5558. *By-laws to specify time and amount of payment of installments, etc.*

SEC. 558. Such corporations must specify in their by-laws the times when the installments of the capital stock are payable, the amount thereof, and the fines, penalties, or forfeitures incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

5559. *Advertisement and sale of delinquent and forfeited shares.*

SEC. 559. Whenever any shares of stock are declared forfeited by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares, by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town, or county where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares must be disposed of to the highest bidder for cash. No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made the secretary must, on receipt of the purchase-money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all installments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

5560. *May borrow and loan funds.*

SEC. 560. Homestead corporations may borrow money for the purposes of the corporation, not exceeding at any one time one fourth of the aggregate amount of the shares or parts of shares actually paid in, and the income thereof; no greater rate of interest must be paid therefor than twelve per cent. per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan, any sum of money which, together with the interest contracted to become

due thereon, will not exceed ninety per cent. of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

5561. *Minor children, wards, and married women may own stock.*

SEC. 561. Such shares of stock in homestead corporations as may be acquired by children, the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

5562. *Forfeiture for speculating in or owning lands exceeding two hundred thousand dollars.*

SEC. 562. Homestead corporations must not purchase and sell, or otherwise acquire and dispose of real property, or any interest therein, or any personal property, for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property, or any interest therein, which in the aggregate exceeds in cash value the sum of two hundred thousand dollars. For any violation of the provisions of this section, corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction such forfeiture may be adjudged, and the judgment carries with it costs of the proceedings.

5563. *When corporation is terminated, and how.*

SEC. 563. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this part. No dividend of funds must be made on termination of its corporate existence until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among its shareholders in proportion to their respective interests, or, upon the application of a majority in interest of the stockholders, must sell and dispose of any or all of the real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders, or may at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums, at auction or otherwise, among the shareholders.

5564. *Payment of premiums.*

SEC. 564. Such premiums on lots may be made payable at the time they are bid off, and, if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the by-laws for the sale of shares on account of delinquent installments and premiums.

5565. *Annual report to be published.*

SEC. 565. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in the [a] newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks, if published in a daily. The statement

must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities.

5566. *Publication in certain cases.*

SEC. 566. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published in an adjoining county.

An Act supplementary to an act entitled An Act to authorize the formation of corporations to provide the members thereof with homesteads, or lots of land suitable for homesteads, approved May 20, 1861.

Approved March 23, 1874; 1873-4, 525.

Extension of time for homestead corporations.

SECTION 1. Any corporation formed under the act to which this act is supplemental, whose period of existence is not stated in its articles of incorporation to be ten years, may continue its corporate existence for ten years from the date of filing its articles of incorporation, upon complying with the provisions of this act.

How existence continued.

SEC. 2. Any such corporation existing on the first day of January, eighteen hundred and seventy-four, may, at any time before its period of existence, as stated in its articles of incorporation, shall expire, continue its existence, as stated in section one of this act, by a majority vote of its board of trustees at any meeting of such board, or by a vote of a majority of the stockholders as the board of trustees may elect. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this act, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed by the act of which this is supplementary.

SEC. 3. This act shall take effect from and after its passage.

TITLE X.

Savings and Loan Corporations.

5571. *May loan money—On what terms, how, and to whom, and how long.*

SEC. 571. Corporations organized for the purpose of accumulating and loaning the funds of their members, stockholders, and depositors, may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and may repay depositors with or without interest. No such corporation must loan money, except on adequate security on real or personal property, and such loan must not be for a longer period than six years.

5572. *Capital stock, and rights and privileges thereof.*

SEC. 572. When savings and loan corporations have a capital stock specified in their articles of incorporation, certificates of the ownership of shares may be issued; and the rights and privileges to be accorded to, and the obligations

to be imposed upon, such capital stock, as distinct from those of depositors, must be fixed and defined, either in the articles of incorporation or in the by-laws.

5573. *No dividend except from surplus profits.*

SEC. 573. The directors of savings and loan corporations may, at such times and in such manner as the by-laws prescribe, declare and pay dividends of so much of the profits of the corporation, and of the interest arising from the capital stock and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors. The directors must not contract any debt or liability against the corporation for any purpose whatever, except for deposits. The capital stock and the assets of the corporation are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

5574. *Property which may be owned, and how disposed of.*

SEC. 574. Savings and loan corporations may purchase, hold and convey real and personal property, as follows:

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed one hundred thousand dollars; except, on a vote of two thirds of the stockholders, the corporation may increase the sum to an amount not exceeding two hundred and fifty thousand dollars;

2. Such as may have been mortgaged, pledged, or conveyed to it in trust, for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation;

3. Such as may have been purchased at sales under pledges, mortgages, or deeds of trust made for its benefit, for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon;

4. No such corporation must purchase, hold, or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section, must be sold by the corporation within five years after the title thereto is vested in it by purchase or otherwise;

5. No corporation must purchase, own or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold and silver bullion and United States mint certificates of ascertained value, and evidences of debt issued by the United States;

6. No corporation must purchase, hold or convey bonds, securities or evidences of indebtedness, public or private, except bonds of the United States, of the State of California, and of the counties, cities, or cities and counties, or towns of the State of California, unless such corporation has a capital stock or reserved fund paid in, of not less than \$300,000. [*Amendment, approved March 18, 1874; Amendments 1873-4, 273; took effect from passage.*^(a)]

5575. *Married women and minors may own stock in their own right.*

SEC. 575. Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

5576. *May issue transferable certificates of deposit.*

SEC. 576. Savings and loan corporations may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery;

(a) The original section did not have the last clause of the third subdivision, commencing with the words "and such as may be conveyed to it." In the last subdivision after "fund" it had the words "or both capital stock and reserved fund."

may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the corporation; payment thereafter made by the corporation to the depositor named in such certificate, or to his assignee named upon the books of the corporation, or, in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, discharges the corporation from all further liability on account of the money so paid.

5577. *To provide reserve fund for the payment of losses.*

SEC. 577. Savings and loan corporations may prescribe by their by-laws the time and conditions on which repayment is to be made to depositors; but whenever there is any call by depositors for repayment of a greater amount than the corporation may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments of the funds of the depositors, or of the earnings thereof, until such excess of call has ceased. The directors of any such corporation having no capital stock must retain, on each dividend day, at least five per cent. of the net profits of the corporation, to constitute a reserve fund, which must be invested in the same manner as other funds of the corporation, and must be used towards paying any losses which the corporation may sustain in pursuing its lawful business. The corporation may provide by its by-laws for the disposal of any excess in the reserve fund over one hundred thousand dollars, and the final disposal, upon the dissolution of the corporation, of the reserve fund, or of the remainder thereof, after payment of losses.

5578. *Prohibition on director and officer, and what vacates office.*

SEC. 578. No director or officer of any savings and loan corporation must, directly or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such corporation, nor must he become an indorser or surety for loans to others, nor in any manner be an obligor for moneys borrowed of or loaned by such corporation. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant.

5579. *Definition of phrase "create debts."*

SEC. 579. Receiving deposits, issuing certificates of deposit, checks, and bills of exchange and the like, in the transaction of the business of savings and loan corporations, must not be construed to be the creation of debts within the meaning of the phrase "create debts," in section 309.

An Act to authorize the husband or wife or next of kin of a deceased person to collect and receive of any savings bank any deposit in such bank, when the same does not exceed the sum of three hundred dollars.

Approved February 18, 1874; 1873-4, 132.

Collect deposit.

SECTION 1. The surviving husband or wife of any deceased person, or if no husband or wife be living, then the next of kin of such decedent may, without procuring letters of administration, collect of any savings bank any sum which said deceased may have left on a deposit in such bank at the time of his or her death; provided, said deposit shall not exceed the sum of three hundred dollars.

Affidavit.

SEC. 2. Any savings bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife, as the case may be, or stating that decedent left no husband or wife, and that affiant is the next of kin of said decedent and entitled to distribution, and that the whole amount that decedent left on deposit in any and all savings banks or bank of deposit

in this state does not exceed the sum of three hundred dollars, may pay to said affiant any deposit of said decedent, if the same does not exceed the sum of three hundred dollars, and the receipt of such affiant shall be a sufficient acquittance therefor.

Guilty.

SEC. 3. Any person who shall make a false affidavit in regard to the matters specified in this act, shall be deemed guilty of perjury.

SEC. 4. This act shall take effect from and after its passage.

TITLE XI.

Mining Corporations.

5584. [SEC. 584^(a) was repealed by act of April 3, 1876; Amendments 1875-6, 73; took effect immediately.]

[The object of the section, which was to change the principal place of business of a mining corporation, is accomplished by an act to the same effect applicable to all corporations. See ante, 5321.]

5585. *Directors to file certificates of proceedings in offices of county clerks and secretary of state.*

SEC. 585. When the publication provided for in the preceding section has been completed, the directors of the corporation must file in the offices of the clerks of the counties from and to which such change has been made, and in the office of the secretary of state, certified copies of the written consent of the stockholders to such change, and of the notice of such change, and proof of publication; also a certificate that the proposed removal has taken place; and thereafter the principal place of business of the corporation is at the place to which it is removed.

5586. *Transfer agencies.*

SEC. 586. Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.

5587. *Stock issued at transfer agencies.*

SEC. 587. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation.

(a) Repealed section:

SEC. 584. Every mining corporation may change its principal place of business from one county or city to another, within this state. Before such removal is made the consent in writing of the holders of two thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent

is obtained, notice of the intended removal must be published for thirty days in some newspaper published at the principal place of business of the corporation, giving the name of the county or city where it is then situated, and that to which it is intended to remove it.

An Act supplemental to an act entitled An Act concerning corporations, passed twenty-second April, one thousand eight hundred and fifty.

Approved March 21, 1872; 1871-2, 443.

Petition for removal of officers.

SECTION 1. On petition of the majority of the shareholders of any corporation formed for the purpose of mining to the county judge of the county where said corporation has its principal place of business, verified by the signers, to the effect that they are severally the holders on the books of the company of the number of shares set opposite their signatures to the foregoing petition, the county judge shall issue his notice to the shareholders of said company that a meeting of the shareholders will be held, stating the time, not less than five nor more than ten days after the first publication of such notice, and the place of meeting within said county, and the object to be to take into consideration the removal of officers of said company; which notice, signed by the said county judge, shall be published daily in one or more daily newspapers published in said county for at least five days before the time for the meeting.

Organization of meeting.

SEC. 2. At the time and place appointed by said notice, those claiming to be shareholders who shall assemble, shall proceed to organize by the appointment of a chairman and secretary, and thereupon those claiming to be shareholders shall present proof thereof, and only those showing a right to vote shall take part in the further proceedings. If it appears that at the time appointed, or within one hour thereafter, shareholders of less than one half the shares are present, no further proceedings shall be had; but the meeting shall be ipso facto dissolved; provided, however, that by a vote of the holders of the majority of the capital stock of the corporations aforesaid, the board of trustees may be required to furnish to the meeting a written detailed statement and account of the affairs, business and property of the corporation; but if the holders of a majority of the shares are present they shall proceed to vote, the secretary calling the roll, and the members voting yea or no, as the case may be. The secretary shall enter the same upon his list, and when he has added up the list and stated the result, he shall sign the same and hand it to the chairman, who shall sign the same and declare the result. [*Amendment, approved April 1, 1876; 1875-6, 730; took effect from passage.*^(a)]

Ballot to supply vacancies.

SEC. 3. If the result of the vote is that the holders of a majority of all the shares of the company are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the chairman, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and having stated the result of the count in writing, shall sign the same and hand it to the chairman, who shall announce the result to the meeting.

Certificate of election.

SEC. 4. A report of the proceedings of the meeting shall be made in writing, signed by the chairman and secretary and verified by them, and delivered to the county judge, who shall thereupon issue to each person chosen a certificate of his election, and shall also issue an order requiring that all books, papers, and all property and effects be immediately delivered to the officers elect; and, the petition and report, indorsed with the date and fact of the issuance of such certificate and order, shall be delivered to the county clerk, to be by him filed in

(a) The original section, instead of "the majority," had the words "two thirds," and instead of "a majority" the words "more than two thirds."

his office, and thereafter the persons thus elected officers shall be the duly elected officers and hold office until the next regular annual meeting, unless removed under the provisions hereof.

Fees of county clerk.

SEC. 5. For all services in these proceedings the county clerk shall receive ten dollars on the issuance of the notice and ten dollars on the issuance of the certificates.

SEC. 6. All acts or parts of acts conflicting with this act are hereby repealed.

SEC. 7. This act shall take effect immediately.

An Act for the better protection of the stockholders in corporations formed under the laws of the State of California, for the purpose of carrying on and conducting the business of mining.

Approved March 30, 1874; 1873-4, 866.

Books of mining corporations.

SECTION 1. It shall be the duty of the secretary of every corporation formed under the laws of the State of California, for the purpose of mining, to keep the books of such corporation, as prescribed by its by-laws, provided such by-laws are not inconsistent with the laws of this state. The books of such corporation shall be produced for examination and inspection during the hours of business, every day in the year, Sundays and legal holidays excepted, upon the demand of any stockholder, holding and presenting a certificate of stock in such corporation, either in his own name and properly indorsed; and the secretary of such corporation shall be required upon the demand of any stockholder holding stock in such corporation, to the amount of five hundred dollars, par value, to have the books of the corporation written up at the end of each month, and shall make out a balance sheet showing the correct financial condition of the corporation, and on or before the tenth day of January and July of each year, he shall make out a written statement, showing all the business and financial transactions of the corporation for the six months preceding, which statement shall also contain a full description of all property of the corporation, and the character and extent of the same, and such statements, together with all papers and records of the corporation, shall be open to examination and inspection upon any demand by such stockholder. All demands of stockholders, as specified in this section, shall be made to the secretary, at the office of the corporation, where its principal place of business is located.

Examination of mines.

SEC. 2. Any owner of stock, of the par value of \$500, in any of the corporations mentioned in section one of this act, shall at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or under ground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation, at any time during the hours of business or labor. And the presentations of certificates of stock in the corporation of the par value of five hundred dollars, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examination of the property of the corporation.

Penalty.

SEC. 3. The violations of any of the provisions of sections one and two of this act, shall subject the trustees of the corporation to a fine of two hundred dollars and costs of suit, and the expenses of the stockholders so refused, in traveling to and from the property, which may be recovered in any court of competent jurisdiction, either in the county where the property is situated, or in the

county where the office and principal place of business of the corporation is situated, which said fine shall be imposed and collected for, and paid over to the person so refused, together with all moneys collected for the said traveling expenses.

SEC. 4. All acts in conflict with the provisions of this act are hereby repealed.

TITLE XII.

Religious, Social and Benevolent Associations.

5593. *Corporations for purposes other than profit, how formed.*

SEC. 593. Any number of persons associated together for religious, social, benevolent, or other purpose included in the subdivisions of section 286, where pecuniary profit is not their object, may, in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this part.

5594. *Additional facts articles of incorporation to set out.*

SEC. 594. In addition to the requirements of section 290, the articles of incorporation of any association mentioned in the preceding section must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

5595. *Corporation to hold property, and amount of real estate limited.*

SEC. 595. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association and providing burial grounds for its deceased members, not to exceed six whole lots in any city or town nor more than twenty acres in the country, the annual increase or income whereof must not exceed fifty thousand dollars.

5596. *How much land masons, odd-fellows, and pioneers may hold.*

SEC. 596. In addition to that provided for in the preceding section, masons,

§ 596. Add after "Odd Fellow," in second line, "Good
Templars." [In effect, March 26, 1878.]

any such corporation may hold such real estate as may be necessary for the purposes, or for the establishment and connection therewith. In case of purchase, of more lands than herein or in the preceding section provided for, such surplus must be sold and conveyed by the corporation within five years after its acquisition. Such sale may be made without the order or decree of the district court, as hereinafter provided.

5597. *Directors to make verified report annually.*

SEC. 597. The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof, to the members of the association for which they are acting.

5598. *Corporations, by order of district court, may mortgage or sell real estate.*

SEC. 598. Corporations of the character mentioned in section five hundred and ninety-three, may mortgage or sell real property held by them, upon ob-

taining an order for that purpose from the district court held in the county in which the property is situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication in such manner and for such time as the court or judge has directed, and that it is for the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. [*Amendment, approved March 30, 1874; Amendments 1873-4, 216; took effect July 1, 1874.*^(a)]

5599. *What may be provided for in their by-laws, etc.*

SEC. 599. Corporations organized for purposes other than for profit may in their by-laws, ordinances, constitutions, or articles of incorporation, in addition to the provisions in Title I of this Part, provide for:

1. The qualifications of members, mode of election, and terms of admission to membership;
2. The fees of admission and dues to be paid to their treasury by members;
3. The expulsion and suspension of members for misconduct or non-payment of dues; also, for restoration to membership;
4. Contracting, securing, paying, and limiting the amount of their indebtedness;
5. Other regulations, not repugnant to the constitution or laws of the state and consonant with the objects of the corporation.

5600. *Members admitted after incorporation.*

SEC. 600. Members admitted after incorporation have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

5601. *No member to transfer membership, etc.*

SEC. 601. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

An Act relating to mutual beneficial and relief associations.

Approved March 28, 1874; 1873-4, 745.

Mutual beneficial and relief associations.

SECTION 1. Associations may be formed for the purpose of paying to the nominee of any member, a sum upon the death of said member, not exceeding three dollars for each member of such association. No such association shall exceed in number one thousand persons.

How formed.

SEC. 2. Such association shall be formed by filing a verified certificate in the

(a) Original section:

SEC. 599. Corporations organized by members of associations mentioned in section 593 may mortgage or sell the necessary real estate held by them, on complying with the following provisions: 1. The directors must, by resolution, declare such disposition of the real estate necessary, or for the best interests of the corporation, in the prosecution of the purposes of the association, setting forth the grounds therefor; 2. The directors must petition the district court of the county in which the real estate is situated, for the mortgage or sale thereof, setting forth the resolution upon which the petition is based; 3. The judge of the court, if it appear that it is a case in which such order should be made, must direct publication of summons to all persons interested in the property to appear before the court and show cause why such order or decree should not be made. The notice must be published in a newspaper published in the city or county where the property is situated, for such time as the judge may direct; in place of the publication, personal notice may be served on all persons interested

in the real estate; 4. At any time before the day set for hearing the petition any person interested in the property may present objections or answer to the petition, raising either question of law or fact, and the same must be tried by the court as other cases are tried; 5. If on the hearing at the trial it is found by the court that the mortgage or sale of the property is unnecessary, or that the best interests of the corporation will not be subserved or advanced thereby, the order and decree must be denied; if it is found necessary, or that the best interests of the corporation will be subserved or advanced thereby, the petition must be granted; 6. The court may, if considered necessary, direct an appraisal of the property to be first made, and appoint disinterested appraisers therefor, fix their compensation and the time for them to report; and direct the making and execution of the mortgage or deed and all necessary accompanying notes, bonds, or contracts, and to what purpose the proceeds must be applied by the corporation as best comports with its objects.

office of the clerk of the county in which the principal place of business shall be situated, and filing a like certificate in the office of the secretary of the state; such certificate shall state the general objects of the association, its principal place of business, and the names of the officers selected to hold office for the next three months, and shall be signed by said officers, and verified by at least

§ 2. Any corporation sole heretofore, organized and existing under the laws of this State, may elect to continue its existence under this Act by filing a certificate to that effect under its corporate seal and the hand of its incumbent, or amended articles of incorporation in the form required by the preceding section, as prescribed by section two hundred and eighty-seven (287) of the Civil Code; and from and after the filing of such certificate or amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities, and provisions of this Act expressed. [In effect March 30th, 1878.

member, may levy an assessment, not exceeding three per cent on the net value of such annual payments or assessments upon any one assessment established at the time

such member joined such association.

Same.

SEC. 4. Such association, by its name, may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, and such other real estate as it may be necessary to purchase on foreclosure of its mortgages; provided, such real estate so obtained through foreclosure shall be sold and conveyed within five years from the day title is obtained, unless the district court of the proper district shall, upon petition and good cause shown, extend the time.

By-laws.

SEC. 5. Such association may make such by-laws, not inconsistent with the laws of this state, as may be necessary for its government, and for the transaction of its business, and shall not be subject to the provisions of the general insurance laws.

Old associations.

SEC. 6 All associations heretofore formed for the objects contemplated by

§ 602. Whenever the rules, regulations, or discipline of any religious denomination, society, or church require, for the administration of the temporalities thereof and the management of the estate and property thereof, it shall be lawful for the bishop, chief priest, or presiding elder of such religious denomination, society or church to become a sole corporation in the manner prescribed in this title, as nearly as may be, and with all the powers and duties and for the uses and purposes in this title provided for religious incorporations, and subject to all the conditions, limitations, and provisions in said title prescribed. The articles of incorporation to be filed shall set forth the facts authorizing such incorporation and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder is required by the rules, regulations, or discipline of such denomination, society, or church to be filled, which statements shall be verified by affidavit; and for proof of the appointment or election of such bishop, chief priest, or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record, with the clerk of the county in which such bishop, chief priest, or presiding elder resides, the original or a copy of his commission or certificate, or letters of election or appointment, duly attested; provided, all property held by such bishop, chief priest, or presiding elder shall be in trust for the use, purpose, and behoof of his religious denomination, society, or church. The limitation in section five hundred and ninety-five shall not apply to corporations formed under this section when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes. The District Judge of the district in which any incorporation is formed under this chapter shall at all times have access to the books of such incorporation.

of its provisions by filing at such society shall not

115.

f. maintain cemeteries may adding three hundred and articles of incorporation are every for the burial of the into lots or plats, avenues, hereof filed in the office of uated. Thereafter, upon ictions, to be inserted in scribe, the directors may

SEC. 609. Every person of full age who is proprietor of a lot or plat in the

cemetery of the corporation, containing not less than two hundred square feet of land, or, if there be more than one proprietor of any such lot, then such of the proprietors as the majority of joint proprietors designate, may, in person or by proxy, cast one vote at all elections had by the corporation for directors or any other purpose, and is eligible to any office of the corporation. At each annual meeting or election, the directors must make a report to the proprietors of all their doings, and of the management and condition of the property and concerns of the corporation.

5610. *May hold personal property, to what amount.*

SEC. 610. Such corporations may hold personal property to an amount not exceeding five thousand dollars, in addition to the surplus remaining from the sales of lots or plats after the payments required in the succeeding section. Such surplus must be disposed of in the improvement, embellishment, and preservation of the cemetery, and paying incidental expenses of the corporation, and in no other manner.

5611. *May issue bonds to pay for grounds.*

SEC. 611. Such corporations may issue their bonds, bearing interest not exceeding twelve per cent. per annum, for the purchase of lands for their cemeteries, payable out of the proceeds of the cemetery, and not otherwise. Sixty per cent. of the proceeds of sales of lots, plats, and graves must be applied at least every three months to the payment of the bonds and interest.

5612. *May take and hold property or use income thereof, how.*

SEC. 612. Cemetery corporations may take and hold any property bequeathed or given them on trust, or the lots, plats, or graves thereon, for the specific purpose of embellishing or improving the grounds, avenues, or superstructures of their cemeteries, to use the income thereof, for the erection, preservation, or repair of monuments therein, or for any other purpose or design consistent with the objects of the corporation.

5613. *Interments in lot, and effect thereof.*

SEC. 613. Whenever an interment is made in any lot or plat transferred to individual owners by the corporation, the same thereby becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner. When there are several owners of interests in such lot or plat, one or more may acquire by purchase the interest of others interested in the fee simple title thereof; but no one not an owner acquires interest or right of burial therein by purchase; nor must any one be buried in any such lot or plat, not at the time owning an interest therein, or who is not the relative of such owner or of his wife, except by consent of all jointly interested.

5614. *Lot owners previous to purchase to be members of the corporation.*

SEC. 614. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, with all the privileges a purchase of a lot from the corporation confers.

TITLE XIV.

Agricultural Fair Corporations.

5620. *May acquire and hold real estate, how much.*

SEC. 620. Agricultural fair corporations may purchase, hold or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease or otherwise dispose of the same, at pleasure. This real estate must be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising and general domestic industry.

5621. *Shall not contract debts or liabilities exceeding amount in treasury.*

SEC. 621. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

5622. *Not for profit.*

SEC. 622. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership, which charges, together with the term of membership and mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

TITLE XV.

Gas Corporations.

5628. *Corporations to obtain privilege from city or town, and use meters proved by inspector.*

SEC. 628. No corporation hereafter formed must supply any city or town with gas, or lay down mains or pipes for that purpose in the streets or alleys thereof, without permission from the city or town authorities, granted in pursuance of the provisions of the Political Code or of statutes expressly continued by such code. Nor must such corporation furnish or use any gas meter which has not been proved and sealed by the inspector of gas meters.

5629. *Gas to be supplied on written application.*

SEC. 629. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars a day as liquidated damages, for every day such refusal or neglect continues thereafter.

5630. *When corporations may refuse to supply gas.*

SEC. 630. No corporation is required to lay service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance,

with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof.

5631. *Agent of corporation may inspect meters.*

SEC. 631. Any agent of a gas corporation exhibiting written authority, signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas supplied by such corporation, to inspect the gas meters therein, to ascertain the quantity of gas supplied or consumed. Every owner or occupant of such buildings who hinders or prevents such entry or inspection must pay to the corporation the sum of fifty dollars as liquidated damages.

5632. *When persons neglect to pay, gas may be shut off.*

SEC. 632. All gas corporations may shut off the supply of gas from any person who neglects or refuses to pay for the gas supplied, or the rent for any meter, pipes, or fittings provided by the corporation as required by his contract; and for the purpose of shutting off the gas in such case any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of any day, and remove therefrom any property of the corporation used in supplying gas.

TITLE XVI.

Land and Building Corporations.

5639. *How organized.*

SEC. 639. Corporations organized for the erection of buildings and making other improvements on real property, may raise funds in shares not exceeding two hundred dollars each, payable in periodical installments. Such bodies are known as land and building corporations, and may be organized with or without a capital stock. [*Amendment, approved March 30, 1874; Amendments 1873-4, 217; took effect July 1, 1874.*^(a)]

5640. *May borrow money.*

SEC. 640. Any such corporation may borrow money for the purpose of carrying out its objects, and may give as security therefor its shares or mortgage upon its real estate.

5641. *Powers and object of corporation.*

SEC. 641. Any such corporation may purchase real estate and erect buildings for its members, and make loans to its members for the purpose of aiding them in acquiring and improving real estate. Such loan must in all cases be secured on such real estate.

5642. *May insure the lives of members and debtors.*

SEC. 642. Such corporation may insure, in some life insurance company incorporated under the laws of this state, the lives of its members and debtors. In case of the death of a debtor or member so insured, the amount recovered on the policy must be applied to extinguish the indebtedness, including the premium paid, and the residue, if any, must be paid to the legal representatives of the decedent.

5643. *What real estate may be owned at any one time.*

SEC. 643. Any such corporation may purchase, hold, and convey real estate, as follows:

1. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed twenty thousand dollars;

(a) The original section, instead of "for the erection of property," had the words "under subdivision eleven of buildings and making other improvements on real of section 285."

2. Such as may from time to time be necessary to supply the wants of its members, the cost of which, held unallotted to the members thereof at any one time, must not exceed the sum of one hundred thousand dollars;

3. Such as shall have been mortgaged, pledged, or conveyed to it in trust, to secure money loaned or to secure the purchase price thereof in pursuance of the regular business of the corporation.

5644. *What the by-laws may provide.*

SEC. 644. The by-laws of such corporations must specify the amount of the periodical subscriptions or payments to be made by each member, the time and manner in which such payments are to be made; the fines and forfeiture for default; the time and manner of election of directors and other officers, and their terms of office; the manner in which the real estate may be distributed, allotted, or sold to its members; the terms and conditions upon which loans may be made to its members and by them repaid to the corporation; the manner in which a person may become and cease to be a member; the conditions on which members may withdraw from the corporation, and the provisions for the payment to withdrawing members of the sums of money due to them arising from subscriptions or payments, and the proportion of the profits such withdrawing members may receive on withdrawal.

5645. *Secretary must make annual statement, and publish same.*

SEC. 645. The secretary of any such corporation must, once in each year during the existence of the corporation, prepare a full and explicit statement of the financial affairs thereof, comprising a balance sheet, statements of receipts and expenditures, profit and loss, and assets and liabilities, which must be audited and verified by two competent persons (not directors); elected by the general body of shareholders, and be countersigned by the president and secretary. A copy of such statement must be printed and circulated among the members, and appear immediately after the annual meeting of the corporation daily at least one week, or weekly at least four weeks, in one or more newspapers published at the place of the principal business of the corporation.

5646. [SEC. 646^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 217; took effect July 1, 1874.]

5647. *Consolidation and transfer of corporation business and property.*

SEC. 647. Any two or more such corporations may unite and become incorporated in one body, with or without any dissolution or division of the funds of such corporation, or either of them; or any such corporation may transfer its engagements, funds, and property to any other such corporation, upon such terms as may be agreed upon by two thirds of the members of each of such bodies present at general meetings of the members, convened for the purpose by notice, stating the object of the meeting, sent through the post-office to every member, and by general notice, appearing daily at least one week, or weekly at least two weeks, in some newspaper published at the place of the principal business of the corporation; but no such transfer can prejudice any right of any creditor of either corporation.

[SEC. 648^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 217; took effect July 1, 1874.]

(a) Repealed section:

SEC. 646. Every present and past member of such corporation is personally liable for such proportion of all its debts and liabilities, incurred during his membership, as the number of shares subscribed by him bears to the whole number of subscribed shares; but no past member is liable for such contribution if more than one year has elapsed since he ceased to be a member before suit is commenced, nor for any debt or liability contracted after the time at which he ceased to be a member, nor unless it appears to the court that the

corporation is unable to satisfy such debts and liabilities; nor must any contribution be required from any member or past member exceeding the amount unpaid on the shares in respect of which he is liable.

(b) Repealed section:

SEC. 648. Married women and minors may be admitted as members and may take and hold shares in such corporations, and may execute all necessary instruments and give all necessary acquittances, and sell and transfer their shares, in like manner as other members.

DIVISION SECOND.

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PART I.

PROPERTY IN GENERAL.

TITLE I. NATURE OF PROPERTY..... 5654
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III. GENERAL DEFINITIONS..... 5748

TITLE I.

Nature of Property.

5654. *Property, what.*

SEC. 654. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

5655. *In what property may exist.*

SEC. 655. There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or granted by statute.

5656. *Wild animals.*

SEC. 656. Animals wild by nature are the subjects of ownership while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

5657. *Real and personal.*

SEC. 657. Property is either:

- 1. Real or immovable; or,
- 2. Personal or movable.

5658. *Real property.*

SEC. 658. Real or immovable property consists of:

- 1. Land;
- 2. That which is affixed to land;
- 3. That which is incidental or appurtenant to land;
- 4. That which is immovable by law.

5659. *Land.*

SEC. 659. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

5660. Fixtures.

SEC. 660. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

5661. Fixtures attached to mines.

SEC. 661. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

5662. Appurtenances.

SEC. 662. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or water-course, or of a passage for light, air, or heat from or across the land of another.

5663. Personal property.

SEC. 663. Every kind of property that is not real is personal.

TITLE II.

Ownership.

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CHAPTER I.

OWNERS.

5669. Owner.

SEC. 5669. All property has an owner, whether that owner is the state, and the property public, or the owner an individual, and the property private. The state may also hold property as a private proprietor.

5670. Property of state.

SEC. 670. The state is the owner of all land below tide-water, and below ordinary high-water mark, bordering upon tide-water within the state; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the state, and of all property of which there is no other owner. [*Amendment, approved March 30, 1874; Amendments 1873-4, 217; took effect July 1, 1874.*^(a)]

5671. Who may own property.

SEC. 671. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this state. [*Amendment, approved March 30, 1874; Amendments 1873-4, 217; took effect July 1, 1874.*^(b)]

5672. Aliens inheriting must claim within five years.

SEC. 672. If a non-resident alien takes by succession, he must appear and claim the property within five years from the time of succession, or be barred. The property in such case is disposed of as provided in Title VIII, Part III, Code of Civil Procedure. [See post, 11,269.]

(a) Original section:

SEC. 670. The state is the owner of all land below high water mark bordering upon tide water; of all land below the water of a lake or stream which constitutes an exterior boundary of the state; of all property lawfully appropriated by it to its own use; of all

property dedicated to the state, and of all property of which there is no other owner.

(b) Original section:

SEC. 671. Any person, whether citizen or alien, may take and hold property, real or personal.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

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ARTICLE I.

INTERESTS IN PROPERTY.

5678. *Ownership, absolute or qualified.*

SEC. 678. The ownership of property is either:

1. Absolute; or,
2. Qualified.

5679. *When absolute.*

SEC. 679. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

5680. *When qualified.*

SEC. 680. The ownership of property is qualified:

1. When it is shared with one or more persons;
2. When the time of enjoyment is deferred or limited;
3. When the use is restricted.

5681. *Several ownership, what.*

SEC. 681. The ownership of property by a single person is designated as a sole or several ownership.

5682. *Ownership of several persons.*

SEC. 682. The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife.

5683. *Joint interest, what.*

SEC. 683. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

5684. *Partnership interest, what.*

SEC. 684. A partnership interest is one owned by several persons, in partnership, for partnership purposes.

5685. *Interest in common, what.*

SEC. 685. An interest in common is one owned by several persons, not in joint ownership or partnership.

5686. *What interests are in common.*

SEC. 686. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 683, or unless acquired as community property.

5687. *Community property.*

SEC. 687. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

5688. *Interests as to time.*

SEC. 688. In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

5689. *Present interest, what.*

SEC. 689. A present interest entitles the owner to the immediate possession of the property.

5690. *Future interest, what.*

SEC. 690. A future interest entitles the owner to the possession of the property only at a future period.

5691. *Perpetual interest, what.*

SEC. 691. A perpetual interest has a duration equal to that of the property.

5692. *Limited interest, what.*

SEC. 692. A limited interest has a duration less than that of the property.

5693. *Kinds of future interests.*

SEC. 693. A future interest is either:

1. Vested; or,
2. Contingent.

5694. *Vested interests.*

SEC. 694. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

5695. *Contingent interests.*

SEC. 695. A future interest is contingent whilst the person in whom, or the event upon which it is limited to take effect remains uncertain.

5696. *Two or more future interests.*

SEC. 696. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

5697. *Certain future interests not to be void.*

SEC. 697. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

5698. *Posthumous children.*

SEC. 698. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

5699. *Qualities of expectant estates.*

SEC. 699. Future interests pass by succession, will, and transfer, in the same manner as present interests.

5700. *Mere possibility not an interest.*

SEC. 700. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

5701. *Interests in real property.*

SEC. 701. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in Part II of this Division.

5702. *Interests in personal property.*

SEC. 702. The names and classification of interests in real property have only such application to interests in personal property as is in this division of the code expressly provided.

5703. *What future interests are recognized.*

SEC. 703. No future interest in property is recognized by the law, except such as is defined in this division of the code.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

5707. *Firing the time of enjoyment.*

SEC. 707. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

5708. *Conditions.*

SEC. 708. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

5709. *Certain conditions precedent void.*

SEC. 709. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

5710. *Conditions restraining marriage are void.*

SEC. 710. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage. [*Amendment, approved March 30, 1874; Amendments 1873-4, 218; took effect July 1, 1874.*^(a)]

5711. *Conditions restraining alienation void.*

SEC. 711. Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

5715. *How long it may be suspended.*

SEC. 715. The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 772.

5716. *Future interests void, which suspend power of alienation.*

SEC. 716. Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

5717. *Leases of agricultural land, for over ten years, void.*

SEC. 717. No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid.

5718. *Leases of city lots, for over twenty years, void.*

SEC. 718. No lease or grant of any town or city lot, for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

(a) The original section did not have the last clause commencing with the words "but this does not affect limitations."

ARTICLE IV.

ACCUMULATIONS.

5722. *Dispositions of income.*

SEC. 722. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

5723. *Accumulations, when void.*

SEC. 723. All directions for the accumulation of the income of property, except such as are allowed by this title, are void.

5724. *Accumulation of income.*

SEC. 724. An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

5725. *Other directions, when void in part.*

SEC. 725. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

5726. *Application of income to support, etc., of minor.*

SEC. 726. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

CHAPTER III.

RIGHTS OF OWNERS.

5732. *Increase of property.*

SEC. 732. The owner of a thing owns also all its products and accessions.

5733. *In certain cases, who entitled to income of property.*

SEC. 733. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

5739. *Future interests, when defeated.*

SEC. 739. A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

5740. *Same.*

SEC. 740. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

5741. *Future interests, when not defeated.*

SEC. 741. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

5742. *Same.*

SEC. 742. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

TITLE III.

General Definitions.**5748.** *Income, what.*

SEC. 748. The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

5749. *Time of creation, what.*

SEC. 749. The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest, within the meaning of this part of the code.

PART II.

REAL OR IMMOVABLE PROPERTY.

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TITLE I.

General Provisions.

5755. *Law governing real property.*

SEC. 755. Real property within this state is governed by the law of this state, except where the title is in the United States. [*Amendment, approved March 30, 1874; Amendments 1873-4, 218; took effect July 1, 1874.*^(a)

TITLE II.

Estates in Real Property.

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CHAPTER I.

ESTATES IN GENERAL.

5761. *Enumeration of estates.*

SEC. 761. Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates;
2. Estates for life;
3. Estates for years; or,
4. Estates at will.

5762. *Estates in fee.*

SEC. 762. Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple, or an absolute fee. [*Amendment, approved March 30, 1874; Amendments 1873-4, 218; took effect July 1, 1874.*^(b)

5763. *Conditional fees and estates tail abolished.*

SEC. 763. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple; and if no valid remainder is limited thereon, is a fee simple absolute.

(a) The original section did not have the last clause commencing with the words "except where the title."

(b) Original section:

SEC. 762. Every estate of inheritance, notwithstanding

ing the abolition of tenures, continues to be called a fee simple, or fee; and every such estate, when not defeasible or conditional, is called a fee simple absolute, or an absolute fee.

5764. *Certain remainders valid.*

SEC. 764. Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death.

5765. *Freeholds—Chattels real—Chattel interests.*

SEC. 765. Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

5766. *Estate for life of a third person, a freehold.*

SEC. 766. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold. [*Amendment, approved March 30, 1874; Amendments 1873-4, 218; took effect July 1, 1874.*^(a)]

5767. *Future estates, what.*

SEC. 767. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

5768. *Reversions.*

SEC. 768. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

5769. *Remainders.*

SEC. 769. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

5770. *Limitations of chattels real.*

SEC. 770. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. [*Amendment, approved March 30, 1874; Amendments 1873-4, 218; took effect July 1, 1874.*^(b)]

5771. *Suspension by trust.*

SEC. 771. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of section 715.

5772. *Contingent remainder in fee.*

SEC. 772. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

5773. *Remainders, future and contingent estates, how created.*

SEC. 773. Subject to the rules of this title, and of Part I of this Division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or

(a) Original section:

SEC. 766. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold only during the life of the grantee or devisee. After his death it is a chattel real.

(b) The original section had the following prefatory words: "The provisions of Title II of Part I of this Division, relative to future estates, apply to limitations of chattels real, as well as to freehold estates, so that."

vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this title.

5774. *Limitation of successive estates for life.*

SEC. 774. Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created. [*Amendment, approved March 30, 1874; Amendments 1873-4, 219; took effect July 1, 1874.*^(a)]

5775. *Remainder upon estates for life or term of years.*

SEC. 775. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term. [*Amendment, approved March 30, 1874; Amendments 1873-4, 219; took effect July 1, 1874.*^(b)]

5776. *Contingent remainder on a term of years.*

SEC. 776. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

5777. *Remainder of estates for life.*

SEC. 777. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

5778. *Remainder upon a contingency.*

SEC. 778. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

5779. *Heirs of a tenant for life, when to take as purchasers.*

SEC. 779. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

5780. *Construction of certain remainders.*

SEC. 780. When a remainder on an estate for life, or for years, is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

5781. *Effect of power of appointment.*

SEC. 781. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

5789. *Tenancy at will may be terminated by notice.*

SEC. 789. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner

(a) The original section did not have the words "and all life estates subsequent to those of persons in being are void."

(b) The original section did not have the words "provided for in the preceding section."

prescribed by section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than one month, to be specified in the notice.

5790. *Effect of notice.*

SEC. 790. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

5791. *Re-entry, when and how to be made.*

SEC. 791. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' notice, as provided in sections 1161 and 1162, Code of Civil Procedure.

5792. *Summary proceedings in certain cases provided for.*

SEC. 792. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in sections 1159 to 1175, both inclusive, of the Code of Civil Procedure.

5793. *Notice not necessary before action.*

SEC. 793. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, in the district court, after the right to re-enter has accrued, without the notice prescribed in section 791.

CHAPTER III.

SERVITUDES.

5801. *Servitudes attached to land.*

SEC. 801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right of way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial.

5802. *Servitudes not attached to land.*

SEC. 802. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right to pasture, and of fishing and taking game;
2. The right of a seat in church;
3. The right of burial;
4. The right of taking rents and tolls;
5. The right of way;
6. The right of taking water, wood, minerals, or other things. [*Amendment, approved March 30, 1874; Amendments 1873-4, 219; took effect July 1, 1874.*^(a)]

5803. *Designation of estates.*

SEC. 803. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

5804. *By whom grantable.*

SEC. 804. A servitude can be created only by one who has a vested estate in the servient tenement.

5805. *By whom held.*

SEC. 805. A servitude thereon cannot be held by the owner of the servient tenement.

5806. *Extent of servitudes.*

SEC. 806. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

5807. *Apportioning easements.*

SEC. 807. In case of partition of the dominant tenement the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

5808. *Rights of owner of future estate.*

SEC. 808. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

5809. *Actions by owner and occupant of dominant tenement.*

SEC. 809. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

5810. *Actions by owner of servient tenement.*

SEC. 810. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

5811. *How extinguished.*

SEC. 811. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person;
2. By the destruction of the servient tenement;
3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,
4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

(a) The original section did not have the words, "to pasture, and" in the first subdivision, and did not have the sixth subdivision.

TITLE III.

Rights and Obligations of Owners.

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CHAPTER I.

RIGHTS OF OWNERS.

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ARTICLE I.

INCIDENTS OF OWNERSHIP.

5818. *Rights of tenant for life.*

SEC. 818. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

5819. *Rights of tenant for years, etc.*

SEC. 819. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy.

5820. *Same.*

SEC. 820. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

5821. *Rights of grantees of rents and reversions.*

SEC. 821. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or deviser might have had.

5822. *Liability of assignee of lessee.*

SEC. 822. Whatever remedies the lessor of any real property [has] against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. [*Amendment, approved March 30, 1874; Amendments 1873-4, 219; took effect July 1, 1874.*^(a)]

5823. *Rights of lessees and their assignees, etc.*

SEC. 823. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

(a) The original section did not have the last clause commencing with the words "for any cause of action."

5824. *Remedy on leases for life.*

SEC. 824. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

5825. *Rent dependent on life.*

SEC. 825. Rent dependent on the life of a person may be recovered after as well as before his death.

5826. *Remedy of reversioners, etc.*

SEC. 826. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

5827. *Terms of lease may be changed by notice.*

SEC. 827. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. [*New section, approved March 30, 1874; Amendments 1873-4, 220; took effect July 1, 1874.*]

ARTICLE II.

BOUNDARIES.

5829. *Rights of owner.*

SEC. 829. The owner of the land in fee has the right to the surface and to everything permanently situated beneath or above it.

5830. *Boundaries by water.*

SEC. 830. Except where the grant under which land is held indicates a different intent, the owner of the upland, when it borders on tide water, takes to ordinary high water mark; when it borders upon a navigable lake or stream, where there is no tide, the owner takes to the edge of the lake or stream, at low water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream. [*Amendment, approved March 30, 1874; Amendments 1873-4, 220; took effect July 1, 1874.*^(a)]

5831. *Boundaries by ways.*

SEC. 831. An owner of land bounded by a road or street is presumed to own to the centre of the way, but the contrary may be shown.

5832. *Lateral and subjacent support, right of owner to excavate.*

SEC. 832. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations. [*Amendment, approved March 30, 1874; Amendments 1873-4, 221; took effect July 1, 1874.*^(b)]

(a) Original section:

SEC. 830. When land borders upon tide water, or upon water which constitutes an exterior boundary of the state, the owner of the upland takes to high water mark; when it borders upon a navigable lake where there is no tide, the owner takes to the edge of the lake at low water mark; when it borders upon any other

water, the owner takes to the middle of the lake or stream.

(b) Original section:

SEC. 832. Each coterminous owner is entitled to the lateral and subjacent support which his land by nature receives from the land of the other.

5833. *Trees whose trunks are wholly on land of one.*

SEC. 833. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

5834. *Line trees.*

SEC. 834. Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

5840. *Duties of tenant for life.*

SEC. 840. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

5841. *Monuments and fences.*

SEC. 841. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;
2. The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

[In a number of the counties there are special laws concerning division and partition fences; and in so far as they are in force they modify the above provisions. See post, 15,308 to 15,335.]

TITLE IV.

Uses and Trusts.**5847.** *What uses and trusts may exist.*

SEC. 847. Uses and trusts in relation to real property are those only which are specified in this title.

[Secs. 848, 849, 850 and 851^(a) were repealed by act approved March 30, 1874; 1874; Amendments 1873-4, 221; took effect July 1, 1874.]

5852. *Trust to be in writing.*

SEC. 852. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;
2. By the instrument under which the trustee claims the estate affected; or,
3. By operation of law.

(a) Repealed sections:

SEC. 848. Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipt of the rents and profits thereof, is to be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

SEC. 849. The last section does not divest the estate of any trustee in a trust, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

SEC. 850. Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person, to the use of or in trust for another, no estate or interest vests in the trustee; but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

SEC. 851. The preceding sections of this title do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

5853. Resulting trust, when presumed.

SEC. 853. When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. [*Amendment, approved March 30, 1874; Amendments 1873-4, 221; took effect July 1, 1874.*^(a)

[Secs. 854 and 855^(b) were repealed by act approved March 30, 1874; Amendments 1873-4, 221; took effect July 1, 1874.]

5856. Purchasers protected.

SEC. 856. No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property for value and without notice of the trust.

5857. Express trusts, for what purposes created.

SEC. 857. Express trusts may be created for any of the following purposes:

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust;
2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;
3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of Title II of this Part; or,
4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title. [*Amendment, approved March 30, 1874; Amendments 1873-4, 221; took effect July 1, 1874.*^(c)

[SEC. 858, as originally passed,^(d) was repealed by act approved March 30, 1874 (Amendments 1873-4, 222; took effect July 1, 1874), and a new section substituted in its place, as follows:]

5858. Powers, when deemed part of the security.

SEC. 858. Where a power to sell real property is given to a mortgagee, or other incumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security, and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded. [*New section, approved March 30, 1874; Amendments 1873-4, 222; took effect July 1, 1874.*

5859. Profits of land liable to creditors in certain cases.

SEC. 859. Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

(a) Original section:

SEC. 853. Where a transfer of real property is made to one person, and the consideration therefor is paid by or for another, no use or trust results in favor of the person by or for whom such payment is made; but the title vests in the grantee, subject only to the provisions of the next two sections.

(b) Repealed sections:

SEC. 854. Every such transfer as is described in the last section is presumed to be fraudulent as against the creditors; and that time, of the person paying the consideration; and where a fraudulent intent is not disproved, a trust results in favor of such creditors to the extent necessary to satisfy their just demands.

SEC. 855. Section 853 does not apply: 1. To cases where the grantee took the grant as an absolute trans-

fer in his own name, without the consent or knowledge of the person paying the consideration; nor, 2. To cases where the grantee, in violation of a trust, purchased the real property so transferred with property belonging to another person.

(c) The original section differed in the first subdivision, which read: "1. To sell real property for the benefit of creditors." In the second subdivision it had the word "sell" before the word "mortgage."

(d) Repealed section:

SEC. 853. A devise of real property to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust.

[SEC. 860, as originally passed,^(a) was repealed by act approved March 30, 1874 (Amendments 1873-4, 222; took effect July 1, 1874), and a new section substituted in its place, as follows:]

5860. Powers, execution of.

SEC. 860. Where a power is vested in several persons, all must unite in its execution; but, in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power. [*New section, approved March 30, 1874; Amendments 1873-4, 222; took effect July 1, 1874.*]

[SEC. 861 and 862^(b) were repealed by act approved March 30, 1874; Amendments 1873-4, 222; took effect July 1, 1874.]

5863. Trustees of express trusts to have whole estate.

SEC. 863. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

5864. Author of trust may devise, etc.

SEC. 864. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

5865. Title of grantor of trust property.

SEC. 865. The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

5866. Interests remaining in grantor of express trust.

SEC. 866. Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

5867. Beneficiary may be restrained from disposing of interest.

SEC. 867. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust. [*Amendment, approved March 30, 1874; Amendments 1873-4, 223; took effect July 1, 1874.*^(c)]

[SEC. 868^(d) was repealed by act approved March 30, 1874; Amendments 1873-4, 223; took effect July 1, 1874.]

5869. Express trust, when deemed absolute grant in favor of purchasers from trustees.

SEC. 869. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee,

(a) Repealed section:

SEC. 860. Where an express trust in relation to real property is created for any purpose not enumerated in the preceding sections, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers contained in Title V of this Part.

(b) Repealed sections:

SEC. 861. Nothing in this title prevents the creation of a power in trust for any of the purposes for which an express trust may be created.

SEC. 862. In every case where a trust is valid as a

power in trust, the real property to which the trust relates remains in, or passes by succession to, the persons otherwise entitled, subject to the execution of the trust as a power in trust.

(c) Original section:

SEC. 867. The beneficiary of a trust for the receipt of the rents and profits of real property cannot transfer or in any manner dispose of his interest in such trust.

(d) Repealed section:

SEC. 868. The beneficiary of a trust for the payment of an annuity out of the rents and profits of real property, or of a sum in gross, can dispose of his interest in such trust.

such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration. [*Amendment, approved March 30, 1874; Amendments 1873-4, 223; took effect July 1, 1874.*^(a)]

5870. *Certain sales, etc., by trustees, void.*

SEC. 870. Where a trust in relation to real property is expressed in the instrument creating the estate every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

5871. *When estate of trustee to cease.*

SEC. 871. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

[TITLE V.]

[Powers.]

[This entire title, on the subject of "Powers," embracing sections from 878 to 940, inclusive, was repealed by act approved March 30, 1874; Amendments 1873-4, 223; took effect July 1, 1874. On account of the unimportance, under the circumstances, of these repealed sections, as well as on account of their length, they are omitted from the foot-notes; and the inquirer, who may desire to consult them, is referred to the Civil Code as published in 1872.]

PART III.

PERSONAL OR MOVABLE PROPERTY.

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TITLE I.

Personal Property in General.

5946. *By what law governed.*

SEC. 946. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile. [*Re-enactment, approved March 9, 1876; Amendments 1875-6, 78; took effect sixtieth day after passage.*]

[The foregoing section may have been repealed by act approved March 30, 1874; Amendments 1873-4, 223. The section containing the repeal, if there was any repeal, referred to the previous title, but apparently treated this section as a part of such title. The repealing section was as follows:

"**SEC. 123.** Title V, of Part III, of Division II, on Powers of the Civil Code, embracing sections of said code from section 878 to 946, inclusive, is repealed."

(a) Original section:

SEC. 869. Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, such grant must be deemed

absolute in favor of the subsequent creditors of the trustees, not having notice of the trust, and in favor of purchasers from such trustees without notice, and for a valuable consideration.

It will be observed that section 946 was not embraced in the title referred to; that it was not upon the subject of Powers, and that the repeal, if any, was effected by the use of the word "inclusive." However this may have been, the section was re-enacted by act approved March 9, 1876; Amendments 1875-6, 78; took effect sixtieth day after passage.]

[SEC. 947 ^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 223; took effect July 1, 1874.]

TITLE II.

Particular Kinds of Personal Property.

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CHAPTER I.

THINGS IN ACTION.

5953. *Thing in action defined.*

SEC. 953. A thing in action is a right to recover money or other personal property by a judicial proceeding. [*Amendment, approved March 30, 1874; Amendments 1873-4, 223; took effect July 1, 1874.*^(b)]

5954. *Transfer and survivorship.*

SEC. 954. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

CHAPTER II.

SHIPPING.

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ARTICLE I.

GENERAL PROVISIONS.

5960. *Ship, shipping terms defined.*

SEC. 960. The term ship, or shipping, when used in this code, includes steam-boats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. [*Amendment, approved March 30, 1874; Amendments 1873-4, 224; took effect July 1, 1874.*^(c)]

5961. *Appurtenances and equipments.*

SEC. 961. All things, belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

(a) Repealed section:

SEC. 947. Where one has the present and another the future interest in a thing personal, and the thing is perishable, the latter may require it to be sold, and the proceeds invested for the benefit of both parties, according to their respective interests; except in case of a thing specially appropriated to a particular use.

(b) The original section, instead of "money or other personal property," had the word "something."

(c) Original section:

SEC. 960. A ship is any structure fitted for navigation. Every kind of ship is included in the term "shipping."

5962. *Foreign and domestic navigation.*

SEC. 962. Ships are engaged either in foreign or domestic navigation, or in the fisheries. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation, when passing from place to place within the United States.

5963. *Foreign and domestic ships distinguished.*

SEC. 963. A ship in the port of a state to which it belongs is called a domestic ship; in another port it is called a foreign ship.

5964. *Several owners.*

SEC. 964. If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

5965. *Owner for voyage.*

SEC. 965. If the owner of a ship commits its possession and navigation to another, that other, and not the owner, is responsible for its repairs and supplies.

5966. *Registry, etc.*

SEC. 966. The registry, enrollment, and license of ships are regulated by acts of congress.

ARTICLE II.

RULES OF NAVIGATION.

5970. *Collisions.*

SEC. 970. In the case of ships meeting, the following rules must be observed, in addition to those prescribed by that part of the Political Code which relates to navigation:

Rules as to ships meeting each other.

1. Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other; and this rule applies to all steamers and all sailing ships, whether on the port or starboard tack, and whether closehauled or not, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation, and, as regards sailing ships on the starboard tack closehauled, to the keeping such ships under command.

The rule for sailing vessels.

2. In the case of sailing vessels, those having the wind fair must give way to those on a wind. When both are going by the wind, the vessel on the starboard tack must keep her wind, and the one on the larboard tack bear up strongly, passing each other on the larboard hand. When both vessels have the wind large or abeam, and meet, they must pass each other in the same way on the larboard hand, to effect which two last-mentioned objects the helm must be put to port. Steam vessels must be regarded as vessels navigating with a fair wind, and should give way to sailing vessels on a wind of either tack.

Rules for steamers in narrow channels.

3. A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of the steamer.

Same.

4. A steamer when passing another steamer in such channel, must always leave the other upon the larboard side.

Rules for steam vessels on different courses.

5. When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.

Meeting of steamers.

6. The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam whistle, or by the regulations concerning lights upon steamers, prescribed under authority of the acts of congress approved August thirtieth, eighteen hundred and fifty-two, and April twenty-ninth, eighteen hundred and sixty-four.

5971. *Collision from breach of rules.*

SEC. 971. If it appears that a collision was occasioned by failure to observe any rule in the foregoing section, the owner of the ship by which such rule is infringed, cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

5972. *Breaches of such rules to imply willful default.*

SEC. 972. Damage to person or property arising from the failure of a ship to observe any rule of section 970, must be deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

5973. *Loss, how apportioned.*

SEC. 973. Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained;
2. If neither was at fault, the loss must be borne by him on whom it falls;
3. If both were in fault, the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned;
4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

PRODUCTS OF THE MIND.

5980. *How far the subject of ownership.*

SEC. 980. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

5981. *Joint authorship.*

SEC. 981. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions;
2. If it is not single, in proportion to the contribution of each.

5982. *Transfer.*

SEC. 982. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

5983. *Effect of publication.*

SEC. 983. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned.

5984. *Subsequent inventor, author, etc.*

SEC. 984. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

5985. *Private writings.*

SEC. 985. Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER IV.

OTHER KINDS OF PERSONAL PROPERTY.

5991. *Trade-mark, what may be appropriated.*

SEC. 991. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade-mark, any form, symbol, or name, which has not been so appropriated by another, to designate the origin or ownership thereof, but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on. [*Amendment, approved March 30, 1874; Amendments 1873-4, 224; took effect July 1, 1874.*^(a)]

[See also, upon the subject of trade-marks, ante, 3196.]

5992. *Good will of business.*

SEC. 992. The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

5993. *Good will transferable.*

SEC. 993. The good will of a business is property, transferable like any other.

5994. *Title deeds.*

SEC. 994. Instruments essential to the title of real property, and which are not kept in a public office as a record, pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

(a) The original did not have the concluding words, "or the place where the thing is produced, or the business is carried on."

PART IV.

ACQUISITION OF PROPERTY.

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TITLE I.

Modes in which Property may be Acquired.**6000.** *Property, how acquired.*

SEC. 1000. Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or,
5. Succession.

6001. *Acquisition of property by exercise of eminent domain.*

SEC. 1001. Any person may, without further legislative action, acquire private property for any use specified in section 1238 of the Code of Civil Procedure either by consent of the owner or by proceedings had under the provisions of Title VII, Part III, of the Code of Civil Procedure; and any person seeking to acquire property for any of the uses mentioned in such title is "an agent of the state," or a "person in charge of such use," within the meaning of those terms as used in such title. This section shall be in force from and after the fourth day of April, eighteen hundred and seventy-two.

TITLE II.

Occupancy.**6006.** *Simple occupancy.*

SEC. 1006. Occupancy for any period confers a title sufficient against all, except the state and those who have title by prescription, accession, transfer, will, or succession.

6007. *Prescription.*

SEC. 1007. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

Accession.

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CHAPTER I.

ACCESSION TO REAL PROPERTY.

6013. *Fixtures.*

SEC. 1013. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 1019, belongs to the owner of the land, unless he chooses to require the former to remove it. [*Amendment, approved March 30, 1874; Amendments 1873-4, 224; took effect July 1, 1874.*^(a)]

6014. *Alluvion.*

SEC. 1014. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

6015. *Sudden removal of bank.*

SEC. 1015. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

6016. *Islands in navigable streams.*

SEC. 1016. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

6017. *In unnavigable streams.*

SEC. 1017. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

6018. *Islands formed by division of stream.*

SEC. 1018. If a stream, navigable or not navigable, in forming itself a new arm, divides itself, and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

[SEC. 1019, as originally passed,^(b) was repealed by act approved March 30, 1874 (Amendments 1873-4, 224; took effect July 1, 1874), and a new section substituted in its place as follows:]

6019. *What fixtures tenant may remove.*

SEC. 1019. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without

(a) The original section did not have the words "except as provided in section 1019."

(b) Repealed section:

SEC. 1019. If a stream, navigable or not navigable,

forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.

injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises. [*New section, approved March 30, 1874; Amendments 1873-4, 224; took effect July 1, 1874.*]

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

6025. *Accession by uniting several things.*

SEC. 1025. When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

6026. *Principal part, what.*

SEC. 1026. That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

6027. *Same.*

SEC. 1027. If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

6028. *Uniting materials and workmanship.*

SEC. 1028. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

6029. *Inseparable materials.*

SEC. 1029. Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

6030. *Materials of several owners.*

SEC. 1030. When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

6031. *Willful trespassers.*

SEC. 1031. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

6032. *Owner may elect between the thing and its value.*

SEC. 1032. In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

6033. *Wrongdoer liable in damages.*

SEC. 1033. One who wrongfully employs materials belonging to another, is liable to him in damages, as well as under the foregoing provisions of this chapter.

TITLE IV.

Transfer.

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CHAPTER I.

TRANSFERS IN GENERAL.

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ARTICLE I.

DEFINITION OF TRANSFER.

6039. *Transfer, what.*

SEC. 1039. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

6040. *Voluntary transfer.*

SEC. 1040. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

6044. *What may be transferred.*

SEC. 1044. Property of any kind may be transferred, except as otherwise provided by this article.

6045. *Possibility.*

SEC. 1045. A mere possibility, not coupled with an interest, cannot be transferred.

6046. *Right of re-entry can be transferred.*

SEC. 1046. A right of re-entry, or of repossession for breach of condition subsequent, can be transferred.

6047. *Owner ousted of possession may transfer.*

SEC. 1047. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

ARTICLE III.

MODE OF TRANSFER.

6052. *When oral.*

SEC. 1052. A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

6053. *Transfer grant defined.*

SEC. 1053. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant," in this and the next two articles, includes all these instruments, unless it is specially applied to real property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 225; took effect July 1, 1874.*^(a)]

6054. *Delivery necessary.*

SEC. 1054. A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

6055. *Date.*

SEC. 1055. A grant duly executed is presumed to have been delivered at its date.

6056. *Delivery to grantee is necessarily absolute.*

SEC. 1056. A grant cannot be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

6057. *Delivery in escrow.*

SEC. 1057. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

6058. *Surrendering or canceling grant does not reconvey.*

SEC. 1058. Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title.

6059. *Constructive delivery.*

SEC. 1059. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

[SEC. 1060^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 225; took effect July 1, 1874.]

ARTICLE IV.

INTERPRETATION OF GRANTS.

6066. *Grants, how interpreted.*

SEC. 1066. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article.

(a) Original section:

SEC. 1063. A transfer in writing is called a grant.

(b) Repealed section:

SEC. 1060. A grant made as a mere gratuity takes effect

upon its execution, even though the grantor retain possession, unless a contrary intention appears.

6067. *Limitations, how controlled.*

SEC. 1067. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

6068. *Recitals, when resorted to.*

SEC. 1068. If the operative words of a grant are doubtful, recourse may be had to its recital to assist the constructions.

6069. *Interpretation against grantor.*

SEC. 1069. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

6070. *Irreconcilable provisions.*

SEC. 1070. If several parts of a grant are absolutely irreconcilable, the former part prevails.

6071. *Meaning of "heirs" and "issue" in certain remainders.*

SEC. 1071. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

6072. *Words of inheritance unnecessary.*

SEC. 1072. Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.

EFFECT OF TRANSFER.

6083. *What title passes.*

SEC. 1083. A transfer vests in the transferee all the actual title to the thing transferred which the transferer then has, unless a different intention is expressed or is necessarily implied.

6084. *Incidents.*

SEC. 1084. The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself. [See also post, 8540.]

6085. *Grant may inure to benefit of stranger.*

SEC. 1085. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

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ARTICLE I.

MODE OF TRANSFER.

6091. *Requisites for transfer of certain estates.*

SEC. 1091. An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

6092. *Form of grant.*

SEC. 1092. A grant of an estate in real property may be made in substance as follows:

"I, A. B., grant to C. D. all that real property situated in (insert name of county) county, State of California, bounded (or described) as follows: (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as for instance, 'The Norris Ranch.')

"Witness my hand this (insert day) day of (insert month) 18—.

"A. B."

6093. *Grant by married women, how acknowledged.*

SEC. 1093. No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by sections 1186 and 1191.

6094. *Power of attorney of married women, how acknowledged.*

SEC. 1094. A power of attorney of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose until acknowledged by her in the manner provided in sections 1186 and 1191.

6095. *Attorney in fact, how must execute for principal.*

SEC. 1095. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

An Act relating to conveyances of real estate.

Approved March 11, 1874; 1873-4, 345.

Conveyances by persons whose names are changed.

SECTION 1. Any person in whom the title of real estate is vested, who shall afterwards, from any cause have his or her name changed, shall, in any conveyances of real estate so held, set forth the name in which he or she derived title to said real estate.

Record of conveyances made by public officers.

SEC. 2. All conveyances of real estate, except patents issued by the state as a party, made by any public officer pursuant to any law of this state, shall, when recorded by the county recorder, be by him alphabetically indexed in the "Index of grantors," both in the name of the officer making such sale, and in the name of the person owning the property so sold.

Indexing of such conveyances.

SEC. 3. It is hereby made the duty of all county recorders to alphabetically index in the "Index of grantors," both in the name by which title was acquired, and also the name by which the same was conveyed, all conveyances referred to in section one of this act.

SEC. 4. This act shall be in force from and after its passage.

ARTICLE II.

EFFECT OF TRANSFER.

6104. *What easements pass with property.*

SEC. 1104. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

6105. *When fee simple title is presumed to pass.*

SEC. 1105. A fee simple title is presumed to be intended to pass by a grant

of real property, unless it appears from the grant that a lesser estate was intended.

6106. *Subsequently acquired title passes by operation of law.*

SEC. 1106. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

6107. *Grant, how far conclusive on purchaser.*

SEC. 1107. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

6108. *Conveyances by owner for life or for years.*

SEC. 1108. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

6109. *Grant made on condition subsequent.*

SEC. 1109. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record.

6110. *Grant on condition precedent.*

SEC. 1110. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition. [*Amendment, approved March 30, 1874; Amendments 1873-4, 225; took effect July 1, 1874.*^(a)]

6111. *Grant of rents, reversions, and remainders.*

SEC. 1111. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, must suffer any damage thereby.

6112. *Boundary by highway, what passes.*

SEC. 1112. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the centre thereof, unless a different intent appears from the grant. [*Amendment, approved March 30, 1874; Amendments 1873-4, 225; took effect July 1, 1874.*^(b)]

6113. *Implied covenants.*

SEC. 1113. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

(a) Original section:

SEC. 1110. An instrument purporting to be a grant of real property, to take effect upon condition precedent, does not pass the estate upon the performance of the condition. Such instrument is an executory contract for the conveyance of the property. Upon the per-

formance of the condition, the grantee is entitled to a grant from the grantor or his successors for the property, duly acknowledged for record.

(b) The original section did not have the words "unless a different intent appears from the grant."

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

6114. *Incumbrances, what include.*

SEC. 1114. The term "incumbrances" includes taxes, assessments, and all liens upon real property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 225; took effect July 1, 1874.*^(a)]

6115. *Lineal and collateral warrantees abolished.*

SEC. 1115. Lineal and collateral warrantees, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

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ARTICLE I.

MODE OF TRANSFER.

6135. *When must be in writing.*

SEC. 1135. An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

6136. *Transfer by sale, etc.*

SEC. 1136. The mode of transferring other personal property by sale is regulated by the title on that subject, in Division Third of this Code.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

6140. *Transfer of title under sale.*

SEC. 1140. The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

6141. *Transfer of title under executory agreement for sale.*

SEC. 1141. Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon offer of performance.

6142. *When buyer acquires better title than seller has.*

SEC. 1142. Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind the transfer made by him.

(a) Original section:

SEC. 1114. The term "incumbrances" includes taxes and assessments; also, attachment, judgment, and exe-

cution liens; also, vendors', mechanics', and mortgage liens; also, all other debts or demands which are liens upon real property.

ARTICLE III.

GIFTS.

6146. *Gifts defined.*

SEC. 1146. A gift is a transfer of personal property, made voluntarily, and without consideration.

6147. *Gift, how made.*

SEC. 1147. A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

6148. *Gift not revocable.*

SEC. 1148. A gift, other than a gift in view of death, cannot be revoked by the giver.

6149. *Gift in view of death, what.*

SEC. 1149. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

6150. *When gift presumed to be in view of death.*

SEC. 1150. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

6151. *Revocation of gift in view of death.*

SEC. 1151. A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time; but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation, shall not be affected by the revocation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 226; took effect July 1, 1874.*]^(a)

6152. *Effect of will upon gift.*

SEC. 1152. A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

6153. *When treated as legacy.*

SEC. 1153. A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

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ARTICLE I.

WHAT MAY BE RECORDED.

6158. *What may be recorded.*

SEC. 1158. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

(a) The original section did not have the last clause commencing with the words "but when the gift has been delivered to the donee."

6159. *Judgments may be recorded without acknowledgment.*

SEC. 1159. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further

§ 1160. Add, "and where letters patent have been lost, or are beyond the control of any party deraining title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have *prima facie* the same force and effect as the original, for title or for evidence, until said original letters patent be recorded." [In effect, May 31, 1878.]

adgment.

or from the State of California, may be recorded

d, unless it belongs to the land and fifty-nine, eleven hundred

class provided for in this chapter. hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by Article III of this chapter. [Amendment, approved March 30, 1874; Amendments 1873-4, 226; took effect July 1, 1874.^(a)

6162. *Same.*

SEC. 1162. An instrument proved and certified pursuant to sections 1198 and 1199 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

[SEC. 1163^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 226; took effect July 1, 1874.]

6164. *Transfers in trust, etc.*

SEC. 1164. Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the titles on the special relation of debtor and creditor, and the chapter on mortgages, respectively.

6165. *Fees of recorder to be indorsed.*

SEC. 1165. The recorder must in all cases indorse the amount of his fee for recordation on the instrument recorded. [New section, approved March 11, 1874; Amendments 1873-4, 274; took effect sixtieth day after passage.

ARTICLE II.

MODE OF RECORDING.

6169. *In what office.*

SEC. 1169. Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated.

6170. *Instrument, when deemed recorded.*

SEC. 1170. An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the recorder's office with the proper officer for record. [Amendment, approved March 30, 1874; Amendments 1873-4, 226; took effect July 1, 1874.^(c)

(a) The original section did not have the words "or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine."

(b) Repealed section:
SEC. 1163. An instrument executed by an attorney in fact must not be recorded until the power of attorney authorizing the execution of the instrument is filed for record in the same office.

(c) Original section:

SEC. 1170. An instrument is recorded when duly acknowledged or proved, certified, and deposited in the recorder's office with the proper officer, and by him filed for record, by noting thereon such filing, with the minute, hour, day, and year thereof, and subscribing the same.

6171. *Books of record.*

SEC. 1171. Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

6172. *Duties of recorder.*

SEC. 1172. The duties of county recorders, in respect to recording instruments, are prescribed by the Political Code.

6173. *Transfer of vessels.*

SEC. 1173. The mode of recording transfers of ships registered under the laws of the United States is regulated by acts of congress.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

6180. *By whom acknowledgments may be taken in this state.*

SEC. 1180. The proof or acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court.

6181. *Same.*

SEC. 1181. The proof or acknowledgment of an instrument may be made in this state within the city, county, or district for which the officer was elected or appointed, before either:

1. A judge or clerk of a court of record; or,
2. A mayor or recorder of a city; or,
3. A court commissioner; or,
4. A county recorder; or,
5. A notary public; or,
6. A justice of the peace.

6182. *By whom taken without the state.*

SEC. 1182. The proof or acknowledgment of an instrument may be made without this state, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge, or clerk of any court of record of the United States; or,
2. A justice, judge, or clerk of any court of record of any state; or,
3. A commissioner appointed by the governor of this state for that purpose; or,
4. A notary public; or,
5. Any other officer of the state where the acknowledgment is made authorized by its laws to take such proof or acknowledgment.

6183. *Acknowledgment, by whom taken without United States.*

SEC. 1183. The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,
2. A consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,
3. A judge of a court of record of the country where the proof or acknowledgment is made; or,
4. Commissioners appointed for such purposes by the governor of the state, pursuant to special statutes; or,
5. A notary public. [*Amendment, approved March 30, 1874; Amendments 1873-4, 227; took effect July 1, 1874.*^(a)]

(a) The original section did not have the words "consular agent."

6184. *Deputy can take acknowledgment.*

SEC. 1184. When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

6185. *Requisites for acknowledgments.*

SEC. 1185. The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

6186. *Acknowledgment by married women.*

SEC. 1186. The acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken, unless she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument, and that she does not wish to retract such execution.

6187. *Same.*

SEC. 1187. A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner, except as mentioned in the last section; but such conveyance has no validity until so acknowledged.

6188. *Certificate to be indorsed on acknowledgment.*

SEC. 1188. An officer taking the acknowledgment of an instrument, must indorse thereon, or attach thereto, a certificate substantially in the forms hereinafter prescribed. [*Amendment, approved March 30, 1874; Amendments 1873-4, 227; took effect July 1, 1874.*^(a)]

6189. *General form of certificate.*

SEC. 1189. The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

STATE OF ———, }
County of ———. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the person whose name is subscribed to the within instrument, and acknowledged to me that he [or they] executed the same.

6190. *Form of acknowledgment by corporation.*

SEC. 1190. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

STATE OF ———, }
County of ———. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the president [or the secretary] of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

6191. *Form of certificate of acknowledgment by married women.*

SEC. 1191. The certificate of acknowledgment by a married woman must be substantially in the following form:

(a) The original section did not have the words "or attach thereto."

STATE OF ———, }
County of ———. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

6192. *Form of certificate of acknowledgment by attorney in fact.*

SEC. 1192. The certificate of acknowledgment by an attorney in fact, must be substantially in the following form:

STATE OF ———, }
County of ———. } ss.

On this — day of —, in the year —, before me [here insert the name and quality of the officer], personally appeared —, known to me [or proved to me on the oath of —] to be the person whose name is subscribed to the within instrument as the attorney in fact of —, and acknowledged to me that he subscribed the name of — thereto as principal, and his own name as attorney in fact.

6193. *Officers must affix their signatures.*

SEC. 1193. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

6194. *Certificate of authority of justices in certain cases.*

SEC. 1194. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

6195. *Proof of execution, how made.*

SEC. 1195. Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or
2. By a subscribing witness; or
3. By other witnesses, in cases mentioned in section 1198.

6196. *Witness must be personally known to officer.*

SEC. 1196. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

6197. *Witness must prove, what.*

SEC. 1197. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

6198. *Handwriting may be proved, when.*

SEC. 1198. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,
2. When the parties and all the subscribing witnesses are non-residents of the state; or,
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,
4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or,
5. In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

6199. *Evidence of handwriting must prove what.*

SEC. 1199. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness. [*Amendment, approved March 30, 1874; Amendments 1873-4, 227; took effect July 1, 1874.*^(a)]

6200. *Certificate of proof.*

SEC. 1200. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

6201. *Officers authorized to do certain things.*

SEC. 1201. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in section 2093, Code of Civil Procedure;
2. To employ and swear interpreters;
3. To issue subpoena, as prescribed in section 1986, Code of Civil Procedure.
4. To punish for contempt, as prescribed in sections 1991, 1993, 1994, Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in section 1992, Code of Civil Procedure.

6202. *When instrument improperly certified, party may have action to correct error.*

SEC. 1202. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

6203. *Action to obtain judgment of proof of an instrument.*

SEC. 1203. Any person interested under an instrument entitled to be proved

(a) The original section had an additional subdivision as follows:
"5. That the witness testifying knew the signature of

the person who executed the instrument, and that his signature is genuine."

for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

6204. *Effect of judgment in such action.*

SEC. 1204. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged.

6205. *Conveyances heretofore made to be governed by then existing laws.*

SEC. 1205. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this code goes into effect, executed, acknowledged, proved, or recorded is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

6206. *Recording, and as evidence, to be governed by then existing laws.*

SEC. 1206. All conveyances of real property made before this code goes into effect, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this chapter.

6207. *Record as notice.—Certified copies as evidence.*

SEC. 1207. Any instrument affecting real property, which was, previous to the thirtieth day of January, one thousand eight hundred and seventy-three, copied into the proper book of record, kept in the office of any county recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded, provided it be first shown that the original instrument was genuine. [*New section, approved March 30, 1874; Amendments 1873-4, 228; took effect July 1, 1874.*]

ARTICLE IV.

EFFECT OF RECORDING, OR THE WANT THEREOF.

6213. *Record, where and to whom notice.*

SEC. 1213. Every conveyance of real property, acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchaser and mortgagees.

6214. *Conveyances to be recorded, or are void, etc.*

SEC. 1214. Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

6215. *Conveyance defined.*

SEC. 1215. The term "conveyance," as used in sections 1213 and 1214, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills.

6216. *Powers of attorney, how revoked.*

SEC. 1216. No instrument containing a power to convey or execute instru-

ments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

6217. *Unrecorded instrument valid between the parties.*

SEC. 1217. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

CHAPTER V.

UNLAWFUL TRANSFERS.

6227. *Certain instruments void against purchasers, etc.*

SEC. 1227. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

6228. *Not void against purchaser having notice, unless fraud is mutual.*

SEC. 1228. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

6229. *Power to revoke, when deemed executed.*

SEC. 1229. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer, for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

6230. *Same.*

SEC. 1230. Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

6231. *Other provisions.*

SEC. 1231. Other provisions concerning unlawful transfers are contained in Part II, Division IV, of this Code, concerning the special relations of debtor and creditor.

TITLE V.

Homesteads.

CHAPTER I. GENERAL PROVISIONS	6237
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III. HOMESTEAD OF OTHER PERSONS	6266

CHAPTER I.

GENERAL PROVISIONS.

6237. *Homestead, of what consists.*

SEC. 1237. The homestead consists of the dwelling-house in which the claim-

ant resides, and the land on which the same is situated, selected as in this title provided. [*Amendment, approved March 30, 1874; Amendments 1873-4, 228; took effect July 1, 1874.*^(a)]

6238. *From what may be selected.*

SEC. 1238. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section one thousand two hundred and sixty-one, the homestead may be selected from any of his or her property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 229; took effect July 1, 1874.*^(b)]

6239. *When selected from wife's separate estate.*

SEC. 1239. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead. [*Amendment, approved March 30, 1874; Amendments 1873-4, 229; took effect July 1, 1874.*^(c)]

6240. *Exempt from forced sale.*

SEC. 1240. The homestead is exempt from execution or forced sale, except as in this title provided.

6241. *Subject to execution, when.*

SEC. 1241. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises;
2. On debts secured by mechanics', laborers', or vendors' liens upon the premises;
3. On debts secured by mortgages upon the premises, executed and acknowledged by the husband, wife, or an unmarried claimant;
4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record. [*Amendment, approved March 30, 1874; Amendments 1873-4, 229; took effect July 1, 1874.*^(d)]

6242. *How conveyed or incumbered.*

SEC. 1242. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

6243. *How abandoned.*

SEC. 1243. A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married;
2. By the claimant, if unmarried.

6244. *Same.*

SEC. 1244. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

6245. *Proceedings on execution against homestead.*

SEC. 1245. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 1241, is levied upon the

(a) Original section:

SEC. 1237. The homestead consists of a quantity of land, on which the claimant resides, selected as in this title provided.

(b) Original section:

SEC. 1238. It may be selected by the claimant from any land in the possession of the claimant, or of the husband of the claimant.

(c) Original section:

SEC. 1239. The husband cannot select a homestead from the separate property of the wife.

(d) The original section in the first subdivision, instead of "premises" had the words "land out of which the homestead is carved." In the second, third and fourth subdivisions, instead of "premises" it had the word "land."

homestead, the judgment creditor may apply to the county judge of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

6246. *Verified petition.*

SEC. 1246. The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead;
2. The name of the claimant;
3. That the value of the homestead exceeds the amount of the homestead exemption.

6247. *Filing.*

SEC. 1247. The petition must be filed with the clerk of the county court.

6248. *Notice.*

SEC. 1248. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing.

6249. *Hearing and appointment of appraiser.*

SEC. 1249. At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

6250. *Oath of appraiser.*

SEC. 1250. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

6251. *View of premises.*

SEC. 1251. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury.

6252. *Report of appraisers.*

SEC. 1252. Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

6253. *Division of property, when.*

SEC. 1253. If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

6254. *Sale, when.*

SEC. 1254. If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution.

6255. *Bids.*

SEC. 1255. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

6256. *Application of proceeds of sale.*

SEC. 1256. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

6257. *Money resulting from execution sale protected.*

SEC. 1257. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the vol-

untary disposition of the husband, which the law gives to the homestead. [*Amendment, approved March 30, 1874; Amendments 1873-4, 230; took effect July 1, 1874.*^(a)

6258. *Compensation of appraisers.*

SEC. 1258. The court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

6259. *Costs.*

SEC. 1259. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in sections 1253 and 1254 the amount so paid must be added as costs on execution, and collected accordingly.

6260. *Who may select homestead, value of.*

SEC. 1260. Homesteads may be selected and claimed:

1. Of not exceeding five thousand dollars in value by any head of a family;
2. Of not exceeding one thousand dollars in value by any other person.

6261. *Head of a family defined.*

SEC. 1261. The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person;
2. Every person who has residing on the premises with him or her and under his or her care and maintenance, either:
 1. His or her minor child, or the minor child of his or her deceased wife or husband;
 2. A minor brother or sister, or the minor child of a deceased brother or sister;
 3. A father, mother, grandfather, or grandmother;
 4. The father, mother, grandfather or grandmother of a deceased husband or wife;
 5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority, and are unable to take care of or support themselves. [*Amendment, approved March 30, 1874; Amendments 1873-4, 230; took effect July 1, 1874.*^(b)

An Act to enable certain parties therein named to alienate or incumber homesteads.

Approved March 25, 1874; 1873-4, 582.

Alienation of homestead.

SECTION 1. In case of a homestead, if either the husband or wife shall become hopelessly insane, upon application of the husband or wife, not insane, to the probate court of the county in which said homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead.

Notice of application.

SEC. 2. Notice of the application for such order shall be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice shall also be served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there be no such male relative known to the applicant, a copy

(a) Original section:

SEC. 1257. The money paid to the claimant is entitled to all the protection against legal process and the voluntary disposition of the husband which the law gives to the homestead.

(b) The original section, instead of the first subdivision as above, had two subdivisions as follows:

"1. The husband; 2. The wife."

of such notice shall be served upon the public administrator of the county in which such homestead is situated; and it is hereby made the duty of such public administrator, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

Petition.

SEC. 3. Thirty days before the hearing of any application under the provisions of this act, the applicant shall present and file in the court in which such application is to be heard, a petition for the order mentioned in the first section of this act, subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife relating to the circumstances and necessities of the applicant and his or her family, as he or she may rely upon in support of the petition.

Order and effect.

SEC. 4. If the court shall make the order provided for in the first section of this act, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order, shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage, in fee simple.

Fees.

SEC. 5. For all services rendered by any public administrator, under the provisions of this act, he shall be allowed a fee not exceeding twenty dollars, to be fixed by the court, and the same shall be taxed as costs against the person making application for the order herein provided for.

SEC. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its passage.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

6262. *Mode of selection.*

SEC. 1262. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. [*Amendment, approved March 30, 1874; Amendments 1873-4, 230; took effect July 1, 1874.*^(a)]

6263. *Declaration, what to contain.*

SEC. 1263. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

(a) Original section:
SEC. 1262. The husband and wife, or either of them, or other head of a family, in the selection of the homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead.

3. A description of the premises;

4. An estimate of their actual cash value. [*Amendment, approved March 30, 1874; Amendments 1873-4, 231; took effect July 1, 1874.*^(a)

6264. *Declaration must be recorded.*

SEC. 1264. The declaration must be recorded in the office of the recorder of the county in which the land is situated.

6265. *Homestead right, when it attaches.*

SEC. 1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the probate court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title. [*Amendment, approved March 30, 1874; Amendments 1873-4, 231; took effect July 1, 1874.*^(b)

CHAPTER III.

HOMESTEAD OF OTHER PERSONS.

6266. *Mode of selection.*

SEC. 1266. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "declaration of homestead."

6267. *Declaration of homestead.*

SEC. 1267. The declaration must contain everything required by the second, third and fourth subdivisions of section 1263.

6268. *Declaration must be recorded.*

SEC. 1268. The declaration must be recorded in the office of the county recorder of the county in which the land is situated.

6269. *Effect of filing for record the declaration of homestead.*

SEC. 1269. From and after the time the declaration is filed for record, the land described therein is a homestead.

TITLE VI.

Wills.

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CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

6270. *Who may make a will.*

SEC. 1270. Every person over the age of eighteen years, of sound mind, may,

(a) Original section:

SEC. 1263. The "declaration of homestead" must contain: 1. A statement of the facts that show the person making it to be the head of a family; 2. A statement that the person making it is residing on the land, and claims it as a homestead; 3. A description of the land; 4. An estimate of its actual cash value.

(b) Original section:

SEC. 1265. From and after the time the declaration is

filed for record, the land therein described is a homestead; and if the declaration was made by a married person, the land is thereafter by the spouses held in joint tenancy, and on the death of either of the spouses, and subject to no other liability than such as exists or has been created under the provisions of this title, it descends to and the title at once vests in the survivor.

by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Title VII of this Part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

6271. [SEC. 1271^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 232; took effect July 1, 1874.]

6272. *Will, or part thereof, procured by fraud.*

SEC. 1272. A will, or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

6273. *Married woman may dispose of separate estate by will.*

SEC. 1273. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills. [Amendment, approved March 30, 1874; Amendments 1873-4, 232; took effect July 1, 1874.^(b)]

6274. *What may pass by will.*

SEC. 1274. Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections 1401 and 1402.

6275. *Who may take by will.*

SEC. 1275. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute. [Amendment, approved January 29, 1874; Amendments 1873-4, 275; took effect from passage.^(c)]

6276. *Written will, how to be executed.*

SEC. 1276. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

6277. *Definition of an olographic will.*

SEC. 1277. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

6278. *Witness to add residence.*

SEC. 1278. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

(a) Repealed section:

SEC. 1271. A person having any insane delusion is incompetent to make a will.

(b) The original section differed in the last sentence, which was as follows: "Her will must be attested, witnessed, and proved in like manner as all other wills."

(c) Original section:

SEC. 1275. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by statute so to take.

6279. Mutual will.

SEC. 1279. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

6280. Competency of subscribing witness.

SEC. 1280. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

6281. Conditional will.

SEC. 1281. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

6282. Gifts to subscribing witnesses void.

SEC. 1282. All beneficial devises, legacies and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

6283. Witness, who is devisee, rights of.

SEC. 1283. If a witness, to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them. [*Amendment, approved March 30, 1874; Amendments 1873-4, 232; took effect July 1, 1874.*^(a)]

6284. [SEC. 1284^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 232; took effect July 1, 1874.]

6285. Will made out of state.

SEC. 1285. No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter. [*Amendment, approved March 30, 1874; Amendments 1873-4, 232; took effect July 1, 1874.*^(c)]

6286.

[SEC. 1286^(d) was repealed by act approved March 30, 1874; Amendments 1873-4, 232; took effect July 1, 1874.]

6287. Republication by codicil.

SEC. 1287. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

6288. Nuncupative will, how to be executed.

SEC. 1288. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

(a) Original section:

SEC. 1283. If a witness, to whom any beneficial devise, legacy, or gift, is made or given, would have been entitled to any share of the estate of the testator, in case the will is not established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will; and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

(b) Repealed section:

SEC. 1284. A will of real or personal property, or both, or a revocation thereof, made out of this state by a person not having his domicile in this state, is as valid, when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state, and according to the provisions of this chapter.

(c) Original section:

SEC. 1285. No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

(d) Repealed section:

SEC. 1286. Whenever a will, or a revocation thereof, is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place by the law of which such will would be void.

6289. *Requisites of valid nuncupative will.*

SEC. 1289. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars;

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect;

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day. [*Amendment, approved March 30, 1874; Amendments 1873-4, 233; took effect July 1, 1874.*^(a)]

6290. *Proof of nuncupative wills.*

SEC. 1290. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

6291. *Probate of nuncupative wills.*

SEC. 1291. No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

6292. *Written will, how revoked.*

SEC. 1292. Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

6293. *Evidence of revocation.*

SEC. 1293. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

6294. [SEC. 1294^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 233; took effect July 1, 1874.]

6295. *Revocation of duplicate.*

SEC. 1295. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

6296. *Revocation by subsequent will.*

SEC. 1296. A prior will is not revoked by a subsequent will, unless the latter

(a) The original section had four subdivisions. The first and second were the same as in the amendment. The third and fourth were as follows:

"3. The decedent must, at the time, have been in his last illness, or in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death;

"4. Except in the cases mentioned in subdivision 3 of this section, it must be made at the dwelling-house of the testator, or where he was residing for the space of ten days or more, unless taken sick from home and death ensues before his return."

(b) Repealed section:

SEC. 1294. A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition, the testator attempts to revoke a provision of the will, by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected.

contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

6297. *Antecedent not revived by revocation of subsequent will.*

SEC. 1297. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished.

6298. *Revocation by marriage and birth of issue.*

SEC. 1298. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

6299. *Effect of marriage of a man on his will.*

SEC. 1299. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

6300. *Effect of a marriage of a woman on her will.*

SEC. 1300. A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

6301. *Contract of sale not a revocation.*

SEC. 1301. An agreement made by a testator for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

6302. *Mortgage not a revocation of will.*

SEC. 1302. A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

6303. *Conveyance, when not a revocation.*

SEC. 1303. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

6304. *When it is a revocation.*

SEC. 1304. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

6305. *Revocation of codicils.*

SEC. 1305. The revocation of a will revokes all its codicils.

6306. *Afterborn child, unprovided for, to succeed.*

SEC. 1306. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

6307. *Children, or issue of children of testator unprovided for by his will.*

SEC. 1307. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

6308. *Share of afterborn child, out of what part of estate to be paid.*

SEC. 1308. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

6309. *Advancement during lifetime of testator.*

SEC. 1309. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

6310. *Death of devisee, being relation of testator in lifetime of testator, leaving lineal descendants.*

SEC. 1310. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

6311. *Devise of land, how construed.*

SEC. 1311. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

6312. *Will passes after-acquired estates.*

SEC. 1312. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease. [*Amendment, approved March 30, 1874; Amendments 1873-4, 233; took effect July 1, 1874.*]

[a] The original section, instead of "unless the contrary," had the words "if it."

6313. *Restriction on power of devise to charitable uses.*

SEC. 1313. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society, or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death such devise or legacy, and each of them, shall be valid; provided, that no such devises or bequests shall collectively exceed one third of the estate of the testator leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law. [*New section, approved March 18, 1874; Amendments 1873-4, 275; took effect from passage.*]

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

6317. *Testator's intention to be carried out.*

SEC. 1317. A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

6318. *Intention to be ascertained from the will.*

SEC. 1318. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

6319. *Rules of interpretation.*

SEC. 1319. In interpreting a will, subject to the law of this state, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

6320. *Several instruments are to be taken together.*

SEC. 1320. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

6321. *Harmonizing various parts.*

SEC. 1321. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

6322. *In what case devise not affected.*

SEC. 1322. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

6323. *When ambiguous or doubtful.*

SEC. 1323. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof in another part of the will.

6324. *Words taken in ordinary sense.*

SEC. 1324. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

6325. *Words to receive an operative construction.*

SEC. 1325. The words of a will are to receive an interpretation which will

give to every expression some effect, rather than one which will render any of the expressions inoperative.

6326. *Intestacy to be avoided.*

SEC. 1326. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

6327. *Effect of technical words.*

SEC. 1327. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

6328. *Technical words not necessary.*

SEC. 1328. Technical words are not necessary to give effect to any species of disposition by a will.

6329. *Certain words not necessary to pass a fee.*

SEC. 1329. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

6330. *Power to devise, how executed by terms of will.*

SEC. 1330. Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

6331. *Devise or bequest of all real or all personal property, or both.*

SEC. 1331. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

6332. *Devise of residue, what passes.*

SEC. 1332. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will. [*Amendment, approved March 30, 1874; Amendments 1873-4, 234; took effect July 1, 1874.*^(a)]

6333. *Same.*

SEC. 1333. A bequest of the residue of the testator's personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will. [*Amendment, approved March 30, 1874; Amendments 1873-4, 234; took effect July 1, 1874.*^(b)]

6334. *"Heirs," "relatives," "issue," "descendants," etc.*

SEC. 1334. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession, in this code.

6335. *Words of donation and of limitation.*

SEC. 1335. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

6336. *To what time words refer.*

SEC. 1336. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

(a) The original section, after "testator's," had the words "estate, property, or."

(b) The original section, after "testator's," had the words "estate, property, or."

6337. *Devise or bequest to a class.*

SEC. 1337. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

6338. *When conversion takes effect.*

SEC. 1338. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

6339. *When child born after testator's death takes under will.*

SEC. 1339. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

6340. *Mistakes and omissions.*

SEC. 1340. When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

6341. *When devises and bequests vest.*

SEC. 1341. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

6342. *When cannot be divested.*

SEC. 1342. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

6343. *Death of devisee or legatee, before testator.*

SEC. 1343. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section thirteen hundred and ten. [*Amendment, approved March 30, 1874; Amendments 1873-4, 234; took effect July 1, 1874.*]

6344. *Interests in remainder are not affected.*

SEC. 1344. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

6345. *Conditional devises and bequests.*

SEC. 1345. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

6346. *Condition precedent, what.*

SEC. 1346. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

6347. *Effect of condition precedent.*

SEC. 1347. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

6348. *Conditions precedent, when deemed performed.*

SEC. 1348. A condition precedent in a will is to be deemed performed when

the testator's intention has been substantially, though not literally, complied with.

6349. *Conditions subsequent, what.*

SEC. 1349. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

6350. *Devisees, etc., take as tenants in common.*

SEC. 1350. A devise or legacy given to more than one person vests in them as owners in common.

6351. *Advancements, when ademptions.*

SEC. 1351. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

6357. *Nature and designation of legacies.*

SEC. 1357. Legacies are distinguished and designated, according to their nature, as follows:

Specific.

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

Demonstrative.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

Annuities.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

Residuary.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

General.

5. All other legacies are general legacies.

6358. *Property of intestate chargeable with debts.*

SEC. 1358. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the Code of Civil Procedure. [*Amendment, approved March 30, 1874; Amendments 1873-4, 234; took effect July 1, 1874.*^(a)]

6359. *Order of resort to property for payment of debts.*

SEC. 1359. The property of a testator, except as otherwise specially provided for in this code, and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

(a) Original section:

SEC. 1358. When a person dies intestate, his property, except such as is otherwise disposed of under this code, and under Chapter V, of Title XI, of Part III, of the Code

of Civil Procedure, and exempt from execution therein, is to be resorted to, in the following order, in payment of debts: 1. Personal property; 2. Real property, other than estates of freehold; 3. Estates of freehold.

1. The property which is expressly appropriated by the will for the payment of the debts;
2. Property not disposed of by the will;
3. Property which is devised or bequeathed to a residuary legatee;
4. Property which is not specifically devised or bequeathed; and,
5. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for. [*Amendment, approved March 30, 1874; Amendments 1873-4, 234; took effect July 1, 1874.*^(a)]

6360. Order of resort to property for payment of legacies.

SEC. 1360. The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies;
2. Property not disposed of by the will;
3. Property which is devised or bequeathed to a residuary legatee;
4. Property which is [not] specifically devised or bequeathed. [*Amendment, approved March 30, 1874; Amendments 1873-4, 235; took effect July 1, 1874.*^(b)]

6361. Same.

SEC. 1361. Legacies to husband, widow, or kindred of any class, are chargeable only after legacies to persons not related to the testator.

6362. Abatement.

SEC. 1362. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

6363. Specific devises and legacies.

SEC. 1363. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the judge of the probate court to sell the property devised and bequeathed, in the cases herein provided.

6364. Heir's conveyance good, unless will is proved within four years.

SEC. 1364. The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the deviser's death.

6365. Possession of legatees.

SEC. 1365. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the

(a) Original section:

SEC. 1359. The property of a testator, with the exception specified in the last section, is to be resorted to, in the following order, for the payment of debts and legacies: 1. Personal property, excepting such as is expressly exempted in the will; 2. Real property expressly devised to pay debts or legacies, where the personal property is exempted in the will, or where the personal property which is not exempted is insufficient; 3. Real property which is not effectually devised; 4. Property, real or personal, charged with debts or legacies; but though real property is charged with the payment of legacies, the personal property is not to be exonerated; 5. The

following property, ratably: real property, devised without being charged with debts or legacies, and specific and demonstrative legacies; 6. Personal property expressly exempted in the will.

(b) Original section:

SEC. 1360. In the application of the personal property of a decedent to the payment of debts, legacies must be charged in the following order, unless a different intention is expressed in the will: 1. Residuary legacies; 2. General legacies; 3. Legacies given for a valuable consideration, or for the relinquishment of some right or interest; 4. Specific and demonstrative legacies.

use and for the benefit of the second legatee, or to the personal representative, as the case may be.

6366. *Bequest of interest.*

SEC. 1366. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

6367. *Satisfaction of legacy.*

SEC. 1367. A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death. [*Amendment, approved March 30, 1874; Amendments 1873-4, 235; took effect July 1, 1874.*^(a)]

6368. *Legacies, when due.*

SEC. 1368. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

6369. *Interest.*

SEC. 1369. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

6370. *Construction of these rules.*

SEC. 1370. The four preceding sections are in all cases to be controlled by a testator's express intention.

6371. *Executor according to the tenor.*

SEC. 1371. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

6372. *Power to appoint is invalid.*

SEC. 1372. An authority to an executor to appoint an executor is void.

6373. *Executor not to act till qualified.*

SEC. 1373. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

6374. *Provisions as to revocations.*

SEC. 1374. The provisions of this title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

6375. *Execution and construction of prior wills not affected.*

SEC. 1375. The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will.

6376. *Law governing validity and interpretation.*

SEC. 1376. The validity and interpretation of wills, wherever made, are governed, when relating to property within this state, by the law of this state. [*Amendment, approved March 30, 1874; Amendments 1873-4, 235; took effect July 1, 1874.*^(b)]

6377. *Liability of beneficiaries for testator's obligations.*

SEC. 1377. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

(a) The original section did not have the words "before death."

(b) Original section:

SEC. 1376. Except as otherwise provided, the validity

and interpretation of wills are governed, when relating to real property within this state, by the law of this state; when relating to personal property, by the law of the testator's domicile.

TITLE VII.

Succession.**6383.** *Succession defined.*

SEC. 1383. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

6384. *Succession to estates of intestate.*

SEC. 1384. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration. [*Amendment, approved March 30, 1874; Amendments 1873-4, 236; took effect July 1, 1874.*^(a)]

6385. [SEC. 1385^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 236; took effect July 1, 1874.]

6386. *Succession to and distribution of property.*

SEC. 1386. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation;

2. If the decedent leave no issue, [and] the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if he leave a mother also, she takes an equal share with the brothers and sisters. If decedent leave no issue, nor husband nor wife, the estate must go to his father;

3. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the decedent, and to the children of any

(a) Original section:

SEC. 1384. The property, both real and personal, of any one who dies without disposing of it by will, passes, in the first instance, to the personal representative of such person as trustee: 1. To make the provision for the surviving husband, or wife, or child, which is directed by Title XI, of Part III, of the Code of Civil Procedure; 2. To apply the property to the payment of the debts of the decedent, according to the title on wills, and the provisions of the Code of Civil Pro-

cedure; and, 3. To distribute any remaining property among those entitled to succeed to the property of the decedent, according to the provisions of this title.

(b) Repealed section:

SEC. 1385. The personal representative of a decedent, within the meaning of that phrase as used in the preceding section, is the duly qualified and acting executor, administrator, or administrator with the will annexed, of the estate of the decedent.

deceased brother or sister, by right of representation; if a mother survive, she takes an equal share with the brothers and sisters;

4. If the decedent leave no issue, nor husband, nor wife, nor father, and no brother nor sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters;

5. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife;

6. If the decedent leave no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However:

7. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation;

8. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally; otherwise, they take according to the right of representation;

9. If the decedent leave no husband, wife, or kindred, the estate escheats to the state, for the support of common schools. [*Amendment, approved March 30, 1874; Amendments 1873-4, 236; took effect July 1, 1874.*]^(a)

6387. *Illegitimate children to inherit in certain events.*

SEC. 1387. Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

6388. *The mother is successor to illegitimate child.*

SEC. 1388. If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or in case of her decease to her heirs at law.

(a) The original section did not have in the first sentence the words "unless otherwise expressly provided in this code and the Code of Civil Procedure." In the first subdivision it did not have the last sentence commencing with the words, "if the decedent leave no

surviving husband or wife, but leave issue." In the second subdivision it did not have the redundant "and." The original section throughout had the indicative "leaves" instead of the subjunctive "leave."

6389. *Degrees of kindred how computed.*

SEC. 1389. The degree of kindred is established by the number of generations, and each generation is called a degree.

6390. *Direct and collateral consanguinity.*

SEC. 1390. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

6391. *Direct line descending, and direct line ascending.*

SEC. 1391. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

6392. *Degrees in direct line.*

SEC. 1392. In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

6393. *Degrees in collateral line.*

SEC. 1393. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins-german in the fourth, and so on.

6394. *Relatives of the half blood.*

SEC. 1394. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

6395. *Advancements constitute part of distributive share.*

SEC. 1395. Any estate, real or personal, given by the decedent in his lifetime, as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

6396. *Advancements, when too much, or not enough.*

SEC. 1396. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

6397. *What are advancements.*

SEC. 1397. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

6398. *Value of advancements, how determined.*

SEC. 1398. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledg-

ment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

6399. *When heir, advanced to, dies before decedent.*

SEC. 1399. If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

6400. *Inheritance of husband and wife from each other.*

SEC. 1400. The provisions of the preceding sections of this title, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

6401. *Community property, on death of wife.*

SEC. 1401. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband. [*Amendment, approved March 30, 1874; Amendments 1873-4, 238; took effect July 1, 1874.*^(a)]

6402. *Distribution of common property on death of the husband.*

SEC. 1402. Upon the death of the husband, one half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

6403. *Inheritance by representation.*

SEC. 1403. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

6404. *Aliens may inherit, when, and how.*

SEC. 1404. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

6405. *When succession not claimed property to be sold, and proceeds deposited.*

SEC. 1405. When succession is not claimed as provided in the preceding section, the district court, on information, must direct the attorney-general to

(a) Original section:

SEC. 1401. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, if he shall not have abandoned and lived separate and apart from her; but if the husband shall have abandoned his wife, and lived

separate and apart from her, the half of the community property, subject to the payment of the debts chargeable to it, is at her testamentary disposition, and in the absence of such disposition goes to her descendants or heirs at law, exclusive of her husband.

reduce the property to his or the possession of the state, or to cause the same to be sold, and the same or the proceeds thereof to be deposited in the state treasury for the benefit of such non-resident foreigner, or his legal representative, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the state controller and treasurer is produced that he is entitled to succeed thereto.

6406. *When the property and estate escheat to the state.*

SEC. 1406. When so claimed, the evidence and the joint order of the controller and treasurer must be filed by the treasurer as his voucher, and the property delivered or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and is placed by the state treasurer to the credit of the school fund.

6407. *Property escheated subject to charges as other property.*

SEC. 1407. Real property passing to the state under the last section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of Title VIII, Part III, of the Code of Civil Procedure. [See post, 11,269.]

6408. *Successor liable for decedent's obligations.*

SEC. 1408. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure.

TITLE VIII.

Water Rights.

6410. *Rights to water may be acquired by appropriation.*

SEC. 1410. The right to the use of running water flowing in a river or stream or down a cañon or ravine may be acquired by appropriation.

6411. *Appropriation must be for a useful purpose.*

SEC. 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

6412. *Point of diversion may be changed.*

SEC. 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

6413. *Water may be turned into natural channels.*

SEC. 1413. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

6414. *First in time, first in right.*

SEC. 1414. As between appropriators, the one first in time is the first in right.

6415. *Notice of appropriation.*

SEC. 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. The purposes for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it.

A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

6416. *Diligence in appropriating.*

SEC. 1416. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.

6417. *Completion defined.*

SEC. 1417. By "completion" is meant conducting the waters to the place of intended use.

6418. *Doctrine of relation applied.*

SEC. 1418. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

6419. *Forfeiture.*

SEC. 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

6420. *Rights of present claimant.*

SEC. 1420. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

6421. *Recorder to keep book in which to record notices.*

SEC. 1421. The recorder of each county must keep a book, in which he must record the notices provided for in this title.

6422. *This title not to affect rights of riparian proprietors.*

SEC. 1422. The rights of riparian proprietors are not affected by the provisions of this title.

An Act to promote irrigation.

Approved April 1, 1872; 1871-2, 945.

Petition to supervisors.

SECTION 1. Whenever the owners of any body of lands susceptible of one mode of irrigation or drainage desire to irrigate or drain the same, they may present to the board of supervisors of the county in which the lands or the greater portion thereof are situated, at a regular meeting of the board, a petition setting forth that they desire to adopt measures to irrigate the same, the description of the lands by legal subdivisions, the number of acres in the whole district, and the number of acres in each tract, with the names of the owners thereof and the names of three persons who may desire to serve as trustees for the first three months.

Publication.

SEC. 2. The petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or,

if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of publication must be filed with such petition.

Districts.

SEC. 3. When a district is situated partly in different counties, the trustees must, after the petition has been granted, forward a copy thereof to the clerk of the board of supervisors of each of the counties in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district unless with the consent of the trustees thereof.

Approval of petition—Trustees.

SEC. 4. If the board of supervisors find upon the hearing of the petition that the statements are correct, and that no land is improperly included or excepted from the district, they must note their approval on the petition, which approval must be signed by the president and attested by the clerk; and from and after the approval the district is duly formed, and the persons named in the petition are the trustees for the first three months, and until their successors are appointed.

Record.

SEC. 5. The petition must then be recorded by the county recorder in a book kept for the purpose.

By-laws.

SEC. 6. After the approval of the petition, the petitioners may make such by-laws as they deem necessary for future appointment of trustees and to effect the works of irrigation or drainage, keep the same in repair and operation, and for the control and management thereof, by the votes or consent of a majority of the owners of the lands within their districts.

Record of by-laws.

SEC. 7. The by-laws adopted must be signed by persons owning a majority of the land within the district, and must be recorded by the county recorder in the same book and immediately following the petition.

Powers of trustees.

SEC. 8. The board thus formed have power to elect one of their number president thereof, and to employ engineers to survey, plan, locate and estimate the cost of the works necessary for the irrigation, the water rights needed, and the land needed for right of way, including drains, canals, sluices, water gates, embankments, and material for construction, and to construct, maintain and keep in repair all works necessary to the object in view.

Reports.

SEC. 9. The board of trustees must report to the board of supervisors of the county, or if the district is in more than one county then to the board of supervisors of each county in which the district is situated, the plans of the work and estimates of the costs, together with estimates of the incidental expenses of superintendence, repairs, etc.

Assessments for benefits.

SEC. 10. The board by which the district was formed must appoint three commissioners, disinterested persons, resident of the county in which the district or some part thereof is situated, and must view and assess upon the lands situated within the district a charge proportionate to the whole expense and to the benefits which will result from such works, which charge must be collected and paid into the county treasury as hereinafter provided, and must be placed

by the treasurer to the credit of the district, and paid out for the work of irrigation or drainage upon the warrants of the trustees, approved by the board of supervisors of the county.

Warrants.

SEC. 11. The warrants drawn by the trustees must, after they are approved by the board of supervisors, be presented to the treasurer of the county, and, if they are not paid on presentation, like indorsement must be made thereon, and they must be registered in like manner as county warrants.

Payments where district in two counties.

SEC. 12. If a district is situated partly in different counties, the charge must be paid into the treasury of the county in which the particular tract may be situated.

Further assessments.

SEC. 13. If the original assessment is insufficient to provide for the complete irrigation or drainage of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the works, the trustees must present to the board of supervisors by which the district was formed a statement of the work to be done and its estimated cost, and the board must make an order directing the commissioners who made the original assessment, or other commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment.

List of charges assessed.

SEC. 14. The commissioners appointed by the board of supervisors must make a list of the charges assessed against each tract of land.

List, what to contain.

SEC. 15. The list must contain:

1. A description, by legal subdivisions or natural boundaries, of each tract assessed;
2. The number of acres in each tract;
3. The names of the owners of each tract, if known, and if unknown, the fact;
4. The amount of the charge assessed against each tract.

List to be filed with treasurer.

SEC. 16. The list so made must be filed with the county treasurer of the county, or if the district is partly situated in different counties, then the original list must be filed in the county first in order under alphabetical arrangement, and copies thereof, certified by the commissioner, must be filed with the treasurer of each of the other counties.

Charges, when constitute liens.

SEC. 17. From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitutes a lien thereon.

Payments.

SEC. 18. The lists thus prepared must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees, and during the time they so remain any person may pay the amount of the charge against any tract to the treasurer, without cost.

Action to collect charges.

SEC. 19. If, at the end of thirty days, or of the longer time fixed by the

trustees, all of the charges have not been paid, the treasurer must return the lists to the district attorney, who must at once proceed by civil action to collect such charges.

Work.

SEC. 20. The work must be executed under the direction and in the manner prescribed by the board of trustees.

Accounts.

SEC. 21. The board must keep accurate accounts of all expenditures, which accounts, and all contracts that may be made by them, are open to the inspection of the board of supervisors, and every person interested.

Property may be acquired.

SEC. 21. The trustees may acquire, by purchase, all property necessary to carry out and maintain the system of irrigation or drainage provided for.

Condemnation.

SEC. 22. The trustees may acquire by condemnation:

1. The right to the use of any running water not already used for culinary or domestic purposes, or for irrigating, milling, or mining purposes;
2. The right of way for canals, drains, embankments, and other work necessary, and may take materials for the construction, maintenance, and repair thereof, from lands outside of as well as within the limits of the district.

Practice.

SEC. 23. The provisions of Title VII, Part III, of the Code of Civil Procedure are applicable to, and the condemnation herein provided for must be made thereunder.

Irrigation or drainage by individual owners.

SEC. 24. Whenever any district susceptible of one mode of irrigation or drainage is entirely owned by parties who desire to irrigate or drain the same, and to manage the irrigation or drainage without the intervention of trustees or the establishment of by-laws, they may file the petition provided for in sections one and two, and must state therein that they intend to undertake the irrigation or drainage on their own responsibility.

Privileges of owners.

SEC. 25. If the petition is granted, the owners of the lands have all the rights, immunities, and privileges granted to boards of trustees, and in all proceedings the names of the owners may be used instead of the names of trustees.

Not applicable to certain counties.

SEC. 26. This act shall not be so construed as applying to the counties of Fresno, Kern, Tulare, and Yolo.

SEC. 27. This act, and the provisions of the title of the Code of Civil Procedure herein referred to, so far as proceedings under this act are to be had, shall be in force from and after the passage of this act.

DIVISION THIRD.

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PART I.

OBLIGATIONS IN GENERAL.

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TITLE I.

Definition of Obligations.

6427. *Obligation, what.*

SEC. 1427. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

6428. *How created and enforced.*

SEC. 1428. An obligation arises either from: 1. The contract of the parties; or, 2. The operation of law.

An obligation arising from operation of law, may be enforced in the manner provided by law, or by civil action or proceeding. [*Amendment, approved March 30, 1874; Amendments 1873-4, 239; took effect July 1, 1874.*^(a)]

TITLE II.

Interpretation of Obligations.

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^(a) The original section did not have the last sentence commencing, "an obligation arising from operation of law."

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

6429. *General rules.*

SEC. 1429. The rules which govern the interpretation of contracts are prescribed by Part II of this Division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

6430. *Obligations, joint or several, etc.*

SEC. 1430. An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or,
3. Joint and several.

6431. *When joint.*

SEC. 1431. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

6432. *Contribution between joint parties.*

SEC. 1432. A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

6434. *Obligation, when conditional.*

SEC. 1434. An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

6435. *Conditions, kinds of.*

SEC. 1435. Conditions may be precedent, concurrent, or subsequent.

6436. *Conditions precedent.*

SEC. 1436. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

6437. *Conditions concurrent.*

SEC. 1437. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

6438. *Conditions subsequent.*

SEC. 1438. A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

6439. *Performance, etc., of conditions, when essential.*

SEC. 1439. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.

6440. *When performance, etc., excused.*

SEC. 1440. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.

6441. *Impossible or unlawful conditions void.*

SEC. 1441. A condition is a contract, the fulfillment of which is impossible or unlawful within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

6442. *Conditions involving forfeiture, how construed.*

SEC. 1442. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

6448. *Who has the right of selection.*

SEC. 1448. If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

6449. *Right of selection, how lost.*

SEC. 1449. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

6450. *Alternatives indivisible.*

SEC. 1450. The party having the right of selection between alternative acts must select one of them in its entirety, and cannot select part of one and part of another without the consent of the other party.

6451. *Nullity of one of alternative obligations.*

SEC. 1451. If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

Transfer of Obligations.**6457.** *Burden of obligation not transferable.*

SEC. 1457. The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 1466.

6458. *Rights arising out of obligation transferable.*

SEC. 1458. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

6459. *Non-negotiable instruments may be transferred.*

SEC. 1459. A non-negotiable written contract for the payment of money or

personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

6460. *Covenants running with land, what.*

SEC. 1460. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the cantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

6461. *What covenants run with land.*

SEC. 1461. The only covenants which run with the land are those specified in this title, and those which are incidental thereto.

6462. *Same.*

SEC. 1462. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.

6463. *Same.*

SEC. 1463. The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

6464. *What covenants run with land when assigns are named.*

SEC. 1464. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the cantee, runs with land so far only as the assigns thus mentioned are concerned.

6465. *Who are bound by covenants.*

SEC. 1465. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.

6466. *Who are not.*

SEC. 1466. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.

6467. *Apportionment of covenants.*

SEC. 1467. Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

Extinction of Obligations.

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CHAPTER I.

PERFORMANCE.

6473. *Obligation extinguished by performance.*

SEC. 1473. Full performance of an obligation by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

6474. *Performance by one of several joint debtors.*

SEC. 1474. Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

6475. *Performance to one of joint creditors.*

SEC. 1475. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit.

6476. *Effect of directions by creditors.*

SEC. 1476. If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

6477. *Partial performance.*

SEC. 1477. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

6478. *Payment, what.*

SEC. 1478. Performance of an obligation for the delivery of money only, is called payment.

6479. *Application of act by way of performance or extinctions of obligation.*

SEC. 1479. Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied;

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor;

3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class ratably:

1. Of interest due at the time of the performance;
2. Of principal due at that time;
3. Of the obligation earliest in date of maturity;

4. Of an obligation not secured by a lien or collateral undertaking;
5. Of an obligation secured by a lien or collateral undertaking. [*Amendment, approved March 30, 1874; Amendments 1873-4, 239; took effect July 1, 1874.*^(a)]

CHAPTER II.

OFFER OF PERFORMANCE.

6485. *Obligation extinguished by offer of performance.*

SEC. 1485. An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

6486. *Offer of partial performance.*

SEC. 1486. An offer of partial performance is of no effect.

6487. *By whom to be made.*

SEC. 1487. An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

6488. *Offer of performance to whom, and where to be made.*

SEC. 1488. An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and, if not, wherever the creditor may be found. [*Amendment, approved March 30, 1874; Amendments 1873-4, 240; took effect July 1, 1874.*^(b)]

6489. *Where offer may be made.*

SEC. 1489. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,
2. Wherever the person to whom the offer ought to be made can be found; or,
3. If such person cannot, with reasonable diligence, be found within this state, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the state; or,
4. If this cannot be done, then at any place within this state.

6490. *When offer must be made.*

SEC. 1490. Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

6491. *Same.*

SEC. 1491. Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

6492. *Compensation after delay in performance.*

SEC. 1492. Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime.

(a) The original section did not have the words "in whole or in part," and instead of the subjunctive "must be" it had the indicative "is." The order of application, provided for under the third subdivision, was as follows:

1. Of an obligation due at the time of performance;
2. Of an obligation not voidable at the option of the debtor;
3. Of an obligation secured by a lien or col-

lateral undertaking; 4. Of interest; 5. Of the obligation earliest in date of maturity; 6. Of the obligation which it is most for the interest of the debtor to extinguish.

(b) The original section, instead of the concluding clause "wherever the creditor may be found," had the words "then to a notary public."

6493. *Offer to be made in good faith.*

SEC. 1493. An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

6494. *Conditional offer.*

SEC. 1494. An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

6495. *Ability and willingness essential.*

SEC. 1495. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

6496. *Production of thing to be delivered not necessary.*

SEC. 1496. The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

6497. *Thing offered to be kept separate.*

SEC. 1497. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

6498. *Performance of condition precedent.*

SEC. 1498. When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

6499. *Written receipts.*

SEC. 1499. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

6500. *Extinction of pecuniary obligation.*

SEC. 1500. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, in some bank of deposit within this state, of good repute, and notice thereof is given to the creditor.

6501. *Objections to mode of offer.*

SEC. 1501. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

6502. *Title to thing offered.*

SEC. 1502. The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

6503. *Custody of thing offered.*

SEC. 1503. The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

6504. *Effect of offer on accessories of obligation.*

SEC. 1504. An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

6505. *Creditor's retention of thing which he refuses to accept.*

SEC. 1505. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

6511. *What excuses performance, etc.*

SEC. 1511. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

6512. *Performance when prevented by creditor.*

SEC. 1512. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties. [*Amendment, approved March 30, 1874; Amendments 1873-4, 240; took effect July 1, 1874.*^(a)]

6513. [SEC. 1513^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 240; took effect July 1, 1874.]

6514. *Same.*

SEC. 1514. If the performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

6515. *Effect of refusal to accept performance before offer.*

SEC. 1515. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CHAPTER IV.

ACCORD AND SATISFACTION.

6521. *Accord, what.*

SEC. 1521. An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. [*Amendment, approved March 30, 1874; Amendments 1873-4, 240; took effect July 1, 1874.*^(c)]

(a) The original section, instead of "if it had been performed by both parties," had the words "by its performance on both sides."

(b) Repealed section:
SEC. 1513. If a debtor is dissuaded by his creditor from performance, but is not actually forbidden to perform, he may, at his option, omit to perform, and

retain whatever he has received under the contract, but he is entitled to nothing more.

(c) The original section, instead of "something different from or less than that to which the person agreeing to accept is entitled," had the words "something to which the person agreeing to accept is not otherwise entitled."

6522. *Effect of accord.*

SEC. 1522. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

6523. *Satisfaction, what.*

SEC. 1523. Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

6524. *Part performance in satisfaction.*

SEC. 1524. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing, for that purpose, though without any new consideration, extinguishes the obligation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 241; took effect July 1, 1874.*^(a)]

CHAPTER V.

NOVATION.

6530. *Novation, what.*

SEC. 1530. Novation is the substitution of a new obligation for an existing one.

6531. *Modes of novation.*

SEC. 1531. Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

6532. *Novation a contract.*

SEC. 1532. Novation is made by contract, and is subject to all the rules concerning contracts in general.

6533. *Novation, right to rescind contract of.*

SEC. 1533. When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time of the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor, or, if before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent. [*Amendment, approved March 30, 1874; Amendments 1873-4, 241; took effect July 1, 1874.*^(b)]

CHAPTER VI.

RELEASE.

6541. *Obligation extinguished by release.*

SEC. 1541. An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

6542. *General release, not to extend to certain claims.*

SEC. 1542. A general release does not extend to claims which the creditor

(a) The original section did not have the words "in writing" in either of the places where they occur in the above amendment.

(b) Original section:

SEC. 1533. When the obligation of a third person, or an order upon such person, is accepted in satisfaction,

the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, before the creditor can with reasonable diligence reach such person, he becomes insolvent.

does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. [*Amendment, approved March 30, 1874; Amendments 1873-4, 241; took effect July 1, 1874.*^(a)

6543. *Release of several joint debtors.*

SEC. 1543. A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

PART II.

CONTRACTS.

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TITLE I.

Nature of a Contract.

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CHAPTER I.

DEFINITION.

6549. *Contract, what.*

SEC. 1549. A contract is an agreement to do or not to do a certain thing.

6550. *Essential elements of contract.*

SEC. 1550. It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration.

CHAPTER II.

PARTIES.

6556. *Who may contract.*

SEC. 1556. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

(a) The original section, instead of "does," had the word "did," and did not have the last clause commencing with the words "which if known by him."

6557. *Minors, etc.*

SEC. 1557. Minors and persons of unsound mind, have only such capacity as is defined by Part I of Division I of this Code.

6558. *Identification of parties necessary.*

SEC. 1558. It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

6559. *When contract for benefit of third person may be enforced.*

SEC. 1559. A contract, made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

6565. *Essentials of consent.*

SEC. 1565. The consent of the parties to a contract must be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

6566. *Consent, when voidable.*

SEC. 1566. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the chapter on rescission.

6567. *Apparent consent, when not free.*

SEC. 1567. An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

6568. *When deemed to have been obtained by fraud, etc.*

SEC. 1568. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

6569. *Duress, what.*

SEC. 1569. Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
2. Unlawful detention of the property of any such person; or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

6570. *Menace, what.*

SEC. 1570. Menace consists in a threat:

1. Of such duress as is specified in subdivisions 1 and 3 of the last section;
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,
3. Of injury to the character of any such person.

6571. *Fraud, actual or constructive.*

SEC. 1571. Fraud is either actual or constructive.

6572. *Actual fraud, what.*

SEC. 1572. Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his conniv-

ance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

6573. Constructive fraud.

SEC. 1573. Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

6574. Actual fraud a question of fact.

SEC. 1574. Actual fraud is always a question of fact.

6575. Undue influence, what.

SEC. 1575. Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
2. In taking an unfair advantage of another's weakness of mind; or,
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

6576. Mistake, what.

SEC. 1576. Mistake may be either of fact or law.

6577. Mistake of fact.

SEC. 1577. Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,
2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

6578. Mistake of law.

SEC. 1578. Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,
2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

6579. Mistake of foreign laws.

SEC. 1579. Mistake of foreign laws is a mistake of fact.

6580. Mutuality of consent.

SEC. 1580. Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

6581. *Communication of consent.*

SEC. 1581. Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

6582. *Mode of communicating acceptance of proposal.*

SEC. 1582. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

6583. *When communication deemed complete.*

SEC. 1583. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

6584. *Acceptance by performance of conditions.*

SEC. 1584. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

6585. *Acceptance must be absolute.*

SEC. 1585. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

6586. *Revocation of proposal.*

SEC. 1586. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

6587. *Revocation, how made.*

SEC. 1587. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 1581 and 1583, before his acceptance has been communicated to the former;
2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;
3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,
4. By the death or insanity of the proposer.

6588. *Ratification of contract void for want of consent.*

SEC. 1588. A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

6589. *Assumption of obligation by acceptance of benefits.*

SEC. 1589. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

6595. *Object, what.*

SEC. 1595. The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

6596. *Requisites of object.*

SEC. 1596. The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

6597. *Impossibility, what.*

SEC. 1597. Everything is deemed possible except that which is impossible in the nature of things.

6598. *When contract wholly void.*

SEC. 1598. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

CHAPTER V.

CONSIDERATION.

6605. *Good consideration, what.*

SEC. 1605. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

6606. *How far legal or moral obligation is a good consideration.*

SEC. 1606. An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further, or otherwise.

6607. *Consideration lawful.*

SEC. 1607. The consideration of a contract must be lawful within the meaning of section 1667.

6608. *Effect of its illegality.*

SEC. 1608. If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

6609. *Consideration executed or executory.*

SEC. 1609. A consideration may be executed or executory, in whole or in part. In so far as it is executory it is subject to the provisions of Chapter IV of this title.

6610. *Executory consideration.*

SEC. 1610. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

6611. *How ascertained.*

SEC. 1611. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

6612. *Effect of impossibility of ascertaining consideration.*

SEC. 1612. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

6613. *Same.*

SEC. 1613. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

6614. *Written instrument presumptive evidence of consideration.*

SEC. 1614. A written instrument is presumptive evidence of a consideration.

6615. *Burden of proof to invalidate sufficient consideration.*

SEC. 1615. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

TITLE II.

Manner of Creating Contracts.

6619. *Contracts, express or implied.*

SEC. 1619. A contract is either express or implied.

6620. *Express contract, what.*

SEC. 1620. An express contract is one, the terms of which are stated in words.

6621. *Implied contract, what.*

SEC. 1621. An implied contract is one, the existence and terms of which are manifested by conduct.

6622. *What contracts may be oral.*

SEC. 1622. All contracts may be oral, except such as are specially required by statute to be in writing.

6623. *Contract not in writing through fraud, may be enforced against fraudulent party.*

SEC. 1623. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

6624. *What contracts must be in writing.*

SEC. 1624. The following contracts are invalid, unless the same, or some an agent or his memorandum thereof, be in writing and subscribed by the party to be tion or a com-
ed, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four of this code;

3. An agreement made upon consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase-money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the

agent be in writing, subscribed by the party sought to be charged. [*Amendment, approved March 30, 1874; Amendments 1873-4, 241; took effect July 1, 1874.*^(a)]

6625. *Effect of writing.*

SEC. 1625. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

6626. *Contract in writing takes effect, when.*

SEC. 1626. A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

6627. *Provisions of chapter on transfers of real property.*

SEC. 1627. The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

6628. *Corporate seal, how affixed.*

SEC. 1628. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

6629. *Provisions abolishing seals made applicable.*

SEC. 1629. All distinctions between sealed and unsealed instruments are abolished.

TITLE III.

Interpretation of Contracts.

6635. *Uniformity of interpretation.*

SEC. 1635. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

6636. *Contracts, how to be interpreted.*

SEC. 1636. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

6637. *Intention of parties, how ascertained.*

SEC. 1637. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

6638. *Intention to be ascertained from language.*

SEC. 1638. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

6639. *Interpretation of written contracts.*

SEC. 1639. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this title.

6640. *Writing, when disregarded.*

SEC. 1640. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

(a) Original section:

SEC. 1624. The following contracts, or some memorandum thereof, expressing the parties, their consent, and the object of the contract, must be in writing, subscribed by the party to be charged thereby, or by his

agent for the purpose: 1. An agreement that by its terms cannot be fully performed within one year; 2. An agreement made upon consideration of marriage, other than mutual promises to marry.

6641. *Effect to be given to every part of contract.*

SEC. 1641. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

6642. *Several contracts when taken together.*

SEC. 1642. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

6643. *Interpretation in favor of contract.*

SEC. 1643. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

6644. *Words to be understood in usual sense.*

SEC. 1644. The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

6645. *Technical words.*

SEC. 1645. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

6646. *Law of place.*

SEC. 1646. A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

6647. *Contracts explained by circumstances.*

SEC. 1647. A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

6648. *Contract restricted to its evident object.*

SEC. 1648. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

6649. *Interpretation in sense in which promisor believed promisee to rely.*

SEC. 1649. If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

6650. *Particular clause subordinate to general intent.*

SEC. 1650. Particular clauses of a contract are subordinate to its general intent.

6651. *Contract, partly written and partly printed.*

SEC. 1651. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

6652. *Repugnancies, how reconciled.*

SEC. 1652. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

6653. *Inconsistent words rejected.*

SEC. 1653. Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

6654. *Words to be taken most strongly against whom.*

SEC. 1654. In cases of uncertainty not removed by the preceding rule, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

6655. *Reasonable stipulations, when implied.*

SEC. 1655. Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

6656. *Necessary incidents implied.*

SEC. 1656. All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

6657. *Time of performance of contract.*

SEC. 1657. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

6658. [SEC. 1658^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 242; took effect July 1, 1874.]

6659. *When joint and several.*

SEC. 1659. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

6660. *Same.*

SEC. 1660. A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

6661. *Executed and executory contracts, what.*

SEC. 1661. An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

Unlawful Contracts.

6667. *What is unlawful.*

SEC. 1667. That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

6668. *Certain contracts unlawful.*

SEC. 1668. All contracts which have for their object, directly or indirectly, to

(a) Repealed section:
SEC. 1658. Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

6669. [SEC. 1669^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 242; took effect July 1, 1874.]

6670. *Contract fixing damages, void.*

SEC. 1670. Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

6671. *Exception.*

SEC. 1671. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

6672.

[SEC. 1672^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 242; took effect July 1, 1874.]

6673. *Contract in restraint of trade, void.*

SEC. 1673. Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent void.

6674. *Exception in favor of sale of good will.*

SEC. 1674. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer or any person deriving title to the good will from him, carries on a like business therein.

6675. *Exception in favor of partnership arrangements.*

SEC. 1675. Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

6676. *Contract in restraint of marriage, void.*

SEC. 1676. Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

Extinction of Contracts.

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CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

6682. *Contract, how extinguished.*

SEC. 1682. A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

(a) Repealed section:

SEC. 1669. Penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

(b) Repealed section:

SEC. 1672. Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

CHAPTER II.

RESCISSION.

6688. *Rescission extinguishes contract.*

SEC. 1688. A contract is extinguished by its rescission.

6689. *When party may rescind.*

SEC. 1689. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

6690. *When stipulations against right to rescind do not defeat it.*

SEC. 1690. A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

6691. *Rescission, how effected.*

SEC. 1691. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

6697. *Alteration of verbal contract.*

SEC. 1697. A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration. [*Amendment, approved March 30, 1874; Amendments 1873-4, 242; took effect July 1, 1874.*^(a)]

6698. *Alteration of written contract.*

SEC. 1698. A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise. [*Amendment, approved March 30, 1874; Amendments 1873-4, 242; took effect July 1, 1874.*^(b)]

(a) Original section:

SEC. 1697. A contract may be altered in any respect by consent of the parties, without a new consideration, and is extinguished thereby to the extent of the alteration.

(b) Original section:

SEC. 1698. A contract in writing may be altered by a contract in writing, or by an executed oral agreement; and not otherwise, except as to the time of performance, which may be extended by any form of agreement.

6699. *Extinction by cancellation, etc.*

SEC. 1699. The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

6700. *Extinction by unauthorized alteration.*

SEC. 1700. The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

6701. *Alteration of duplicate not to prejudice.*

SEC. 1701. Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART III.

OBLIGATIONS IMPOSED BY LAW.

6708. *Abstinence from injury.*

SEC. 1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

6709. *Fraudulent deceit.*

SEC. 1709. One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

6710. *Deceit, what.*

SEC. 1710. A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

6711. *Deceit upon the public, etc.*

SEC. 1711. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

6712. *Restoration of thing wrongfully acquired.*

SEC. 1712. One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

6713. *When demand necessary.*

SEC. 1713. The restoration required by the last section must be made without

demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

6714. *Responsibility for willful acts, negligence, etc.*

Sec. 1714. Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

6715. *Other obligations.*

Sec. 1715. Other obligations are prescribed by Divisions I and II of this Code.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

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TITLE I.

Sale.

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CHAPTER I.

GENERAL PROVISIONS.

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ARTICLE I.

SALE.

6721. *Sale, what.*

SEC. 1721. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

6722. *Subject of sale.*

SEC. 1722. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.

AGREEMENTS FOR SALE.

6726. *Agreement for sale.*

SEC. 1726. An agreement for sale is either:

1. An agreement to sell;
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

6727. *Agreement to sell.*

SEC. 1727. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

6728. *Agreement to buy.*

SEC. 1728. An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

6729. *Agreement to sell and buy.*

SEC. 1729. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

6730. *What may be the subject of the contract.*

SEC. 1730. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

6731. *Agreement to sell real property.*

SEC. 1731. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. [*Amendment, approved March 30, 1874; Amendments 1873-4, 243; took effect July 1, 1874.*^(a)]

6732. [SEC. 1732^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 243; took effect July 1, 1874.]

6733. *Usual common law covenants required by such contracts, when.*

SEC. 1733. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances."

6734. *Form of such covenants.*

SEC. 1734. The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute

(a) Original section:

SEC. 1731. An agreement to sell real property binds the seller to execute a grant in the form and manner prescribed by the chapter on transfers of real property.

(b) Repealed section:

SEC. 1732. An agreement to sell real property binds the seller to execute a grant in the form prescribed by section 1092.

and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

ARTICLE III.

FORM OF THE CONTRACT.

6739. *Contract for sale of personal property.*

SEC. 1739. No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

2. The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

3. The buyer, at the time of sale, pays a part of the price. [*Amendment, approved March 30, 1874; Amendments 1873-4, 243; took effect July 1, 1874.*^(a)]

6740. *Contract to manufacture.*

SEC. 1740. An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

6741. *Contract for sale of real property.*

SEC. 1741. No agreement for the sale of real property, or of an interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof. [*Amendment, approved March 30, 1874; Amendments 1873-4, 243; took effect July 1, 1874.*^(b)]

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

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ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

6748. *When seller must act as depositary.*

SEC. 1748. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

6749. *When seller may resell.*

SEC. 1749. If a buyer of personal property does not pay for it according to

(a) The original section differed in the first and second subdivisions. The first was as follows:

"1. A memorandum of the contract, showing the parties, their consent, and the subject of sale, is made in writing, and subscribed by the party to be charged; or,"

The second subdivision did not have the words "or some of them."

(b) Original section:

SEC. 1741. No agreement for the sale of real property,

or of any estate therein, other than an estate for a term not exceeding one year, is valid, unless a memorandum thereof, showing the parties, their consent, and the subject of sale, is made in writing, and subscribed by the party to be charged or his agent, thereunto authorized in writing, or unless the contract has been partially performed by the party seeking to enforce it, and such part performance has been accepted by the other.

contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the title on liens.

ARTICLE II.

DELIVERY.

6753. *Delivery on demand.*

SEC. 1753. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

6754. *Delivery, where made.*

SEC. 1754. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

6755. *Expense of transportation.*

SEC. 1755. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

6756. *Notice of election as to delivery.*

SEC. 1756. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

6757. *Buyer's directions as to manner of sending things sold.*

SEC. 1757. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

6758. *Delivery to be within reasonable hours.*

SEC. 1758. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

6763. *Warranty, what.*

SEC. 1763. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

6764. *No implied warranty in mere contract of sale.*

SEC. 1764. Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

6765. *Warranty of title to personal property.*

SEC. 1765. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto.

6766. *Warranty on sale by sample.*

SEC. 1766. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

6767. *When seller knows that buyer relies on his statements.*

SEC. 1767. One who sells or agrees to sell personal property, knowing that

the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

6768. *Merchandise not in existence.*

SEC. 1768. One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

6769. *Manufacturer's warranty against latent defects.*

SEC. 1769. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

6770. *Thing bought for particular purpose.*

SEC. 1770. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

6771. *When thing cannot be examined by buyer.*

SEC. 1771. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

6772. *Trade-marks.*

SEC. 1772. One who sells or agrees to sell any article to which there is affixed or attached a trade-mark, thereby warrants that mark to be genuine and lawfully used.

6773. *Other marks.*

SEC. 1773. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof.

6774. *Warranty, on sale of written instrument.*

SEC. 1774. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause. [*Amendment, approved March 30, 1874; Amendments 1873-4, 244; took effect July 1, 1874.*^(a)]

6775. *Warranty of provisions for domestic use.*

SEC. 1775. One who makes a business of selling provisions for domestic use warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

6776. *Warranty on sale of good will.*

SEC. 1776. One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers.

6777. *Warranty upon judicial sale.*

SEC. 1777. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

6778. *Effect of general warranty.*

SEC. 1778. A general warranty does not extend to defects inconsistent there-

(a) The original section after "warrants" had the following additional words: "the instrument to be what it purports to be, and to be binding according to its purport upon all the parties thereto; and also warrants."

with of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

6784. *Price, when to be paid.*

SEC. 1784. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

6785. *Right to inspect goods.*

SEC. 1785. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

6786. *Rights in case of breach of warranty.*

SEC. 1786. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

6792. *Sale by auction, what.*

SEC. 1792. A sale by auction is a sale by public outcry to the highest bidder on the spot.

6793. *Sale, when complete.*

SEC. 1793. A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

6794. *Withdrawal of bid.*

SEC. 1794. Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

6795. *Sale under written conditions.*

SEC. 1795. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

6796. *Rights of buyer upon sale without reserve.*

SEC. 1796. If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

6797. *By bidding.*

SEC. 1797. The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

6798. *Auctioneer's memorandum of sale.*

SEC. 1798. When property is sold by auction, an entry made by the auctioneer, in his sale-book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the

buyer, binds both the parties in the same manner as if made by themselves. [*Amendment, approved March 30, 1874; Amendments 1873-4, 244; took effect July 1, 1874.*^(a)]

TITLE II.

Exchange.

6804. *Exchange, what.*

SEC. 1804. Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

6805. *Form of contract.*

SEC. 1805. The provisions of section 1739 apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more.

6806. *Parties have rights and obligations of sellers and buyers.*

SEC. 1806. The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

6807. *Warranty of money.*

SEC. 1807. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

Deposit.

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CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I. NATURE AND CREATION OF DEPOSIT.....	6813
II. OBLIGATIONS OF THE DEPOSITARY.....	6822

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

6813. *Deposit, kinds of.*

SEC. 1813. A deposit may be voluntary or involuntary; and for safe keeping or for exchange.

6814. *Voluntary deposit, how made.*

SEC. 1814. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

(a) Original section:

SEC. 1738. When property is sold by auction, the auctioneer, or his partner or clerk, may enter in a sale book, at the time of the sale, a memorandum specifying the name of the person for whom he sells, the

thing sold, the price, the terms of sale, and the name of the buyer. A memorandum thus made binds both the parties in the same manner as if made by themselves.

6815. *Involuntary deposit, how made.*

SEC. 1815. An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,
2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

6816. *Same.*

SEC. 1816. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

[As to involuntary trust resulting from negligence, see post, 7224.]

6817. *Deposit for safe keeping, what.*

SEC. 1817. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

6818. *Deposit for exchange, what.*

SEC. 1818. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

6822. *Depositary must deliver on demand.*

SEC. 1822. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 1825.

6823. *No obligation to deliver without demand.*

SEC. 1823. A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

6824. *Place of delivery.*

SEC. 1824. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

6825. *Notice to owner of adverse claim.*

SEC. 1825. A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

6826. *Notice to owner of thing wrongfully detained.*

SEC. 1826. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position, in respect to the thing, to his prejudice.

6827. *Delivery of thing owned jointly, etc.*

SEC. 1827. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

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ARTICLE I.

GENERAL PROVISIONS.

6833. *Depositor must indemnify depositary.*

SEC. 1833. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,
2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

6834. *Obligation of depositary of animals.*

SEC. 1834. A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

6835. *Obligations as to use of thing deposited.*

SEC. 1835. A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

6836. *Liability for damage arising from wrongful use.*

SEC. 1836. A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

6837. *Sale of thing in danger of perishing.*

SEC. 1837. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

6838. *Injury to, or loss of thing deposited.*

SEC. 1838. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

6839. *Service rendered by depositary.*

SEC. 1839. So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service.

6840. *Limitation of liability of depositing for negligence.*

SEC. 1840. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth. [*Amendment, approved March 30, 1874; Amendments 1873-4, 244; took effect July 1, 1874.*^(a)]

(a) The original section, instead of "cannot exceed," had the words "is limited to."

ARTICLE II.

GRATUITOUS DEPOSIT.

6844. *Gratuitous deposit, what.*

SEC. 1844. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

6845. *Nature of involuntary deposit.*

SEC. 1845. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

6846. *Degrees of care required of gratuitous depositary.*

SEC. 1846. A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

6847. *His duties cease, when.*

SEC. 1847. The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,
2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 1815, cannot give such notice until the emergency which gave rise to the deposit is past.

[ARTICLE III.

STORAGE.

6851. *Deposit for hire.*

SEC. 1851. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

6852. *Degree of care required of depositary for hire.*

SEC. 1852. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

6853. *Rate of compensation for fraction of a week, etc. **

SEC. 1853. In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

6854. *Termination of deposit.*

SEC. 1854. In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

6855. *Same.*

SEC. 1855. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

ARTICLE IV.

INNKEEPERS.

6859. *Innkeeper's liability.*

SEC. 1859. An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn.

6860. *How exempted from liability.*

SEC. 1860. If an innkeeper keeps a fireproof safe, and gives notice to a guest,

either personally or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or injury to such articles, if not deposited with him, and not required by the guest for present use.

6861. *Lien by hotel, inn, boarding-house, and lodging-house keepers.*

SEC. 1861. Hotel, inn, boarding-house and lodging-house keepers shall have a lien upon the baggage and other property of value of their guests, or boarders, or lodgers, brought into such hotel, inn, or boarding or lodging-house, by such guests, or boarders, or lodgers, for the proper charges due, from such guests, or boarders, or lodgers, for their accommodation, board, and lodging, and room rent, and such extras as are furnished at their request, with the right to the possession of such baggage or other property of value, until all such charges are paid. [*New section, approved April 1, 1876; Amendments 1875-6, 78; took effect from passage.*]

6862. *Sale of unclaimed baggage for storage, etc.*

SEC. 1862. Whenever any trunk, carpet-bag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging-house, as such, and has remained or shall remain unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging-house is situated. Said notice shall be published once a week for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet-bag, valise, box, bundle, or other baggage, as near as may be, the name of the owner, if known, the name of such keeper, and the time and place of such sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpet-bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof or his legal representatives within one year thereafter, the same shall be paid into the general fund of said county. [*New section, approved April 1, 1876; Amendments 1875-6, 78; took effect from passage.*]

6863. *Posting of statement of charges, etc.*

SEC. 1863. Every keeper of a hotel, inn, boarding or lodging-house, shall post in a conspicuous place in the office or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charge or rate of charges by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging-house. For any violation of this section, or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to. [*New section, approved April 1, 1876; Amendments 1875-6, 78; took effect from passage.*]

ARTICLE V.

FINDING.

6864. *Obligation of finder.*

SEC. 1864. One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

6865. *Finder to notify owner.*

SEC. 1865. If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

6866. *Claimant to prove ownership.*

SEC. 1866. The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

6867. *Reward, etc., to finder.*

SEC. 1867. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

6868. *Finder may put thing found on storage.*

SEC. 1868. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense.

6869. *When finder may sell the thing found.*

SEC. 1869. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two thirds of its value.

6870. *How sale is to be made.*

SEC. 1870. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

6871. *Surrender of thing to the finder.*

SEC. 1871. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

6872. *Thing abandoned.*

SEC. 1872. The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

6878. *Relations of the parties.*

SEC. 1878. A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

Loan.

CHAPTER I. LOAN FOR USE.....	6884
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CHAPTER I.

LOAN FOR USE.

6884. *Loan, what.*

SEC. 1884. A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

6885. *Title to property lent.*

SEC. 1885. A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

6886. *Care required of borrower.*

SEC. 1886. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

6887. *Same.*

SEC. 1887. One who borrows a living animal for use, must treat it with great kindness, and provide everything necessary and suitable for it.

6888. *Degree of skill.*

SEC. 1888. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

6889. *Borrower, when to repair injuries.*

SEC. 1889. A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

6890. *Use of thing lent.*

SEC. 1890. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

6891. *Relending forbidden.*

SEC. 1891. The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

6892. *Borrower, when to bear expenses.*

SEC. 1892. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

6893. *Lender liable for defects.*

SEC. 1893. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

6894. *Lender may require return of thing lent.*

SEC. 1894. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the

benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

6895. *When returnable without demand.*

SEC. 1895. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

6896. *Place of return.*

SEC. 1896. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

6902. *Loan for exchange, what.*

SEC. 1902. A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

6903. *Same.*

SEC. 1903. A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

6904. *Title to property lent.*

SEC. 1904. By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

6905. *Contract cannot be modified by lender.*

SEC. 1905. A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

6906. *Certain sections applicable.*

SEC. 1906. Sections 1893, 1895, and 1896, apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

6912. *Loan of money.*

SEC. 1912. A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

6913. *Loan to be repaid in current money.*

SEC. 1913. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

6914. *Loan, presumed to be on interest.*

SEC. 1914. Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing. [*Amendment, approved March 30, 1874; Amendments 1873-4, 244; took effect July 1, 1874.*^(a)]

(a) Original section:

SEC. 1914. A loan of money may be made with or without reward, but is presumed to be made for reward.

6915. Interest defined.

SEC. 1915. Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money. [*Amendment, approved March 30, 1874; Amendments 1873-4, 245; took effect July 1, 1874.*^(a)]

6916. Annual rate.

SEC. 1916. When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

6917. Legal interest—Computation.

SEC. 1917. Unless there is an express contract in writing fixing a different

§ 1917. Change "ten," in third line, to "seven." [In effect, April 16, 1878.] ten per cent. per annum, except a judgment, and on

moneys lent or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period less than a year, three hundred and sixty days are deemed to constitute a year. [*Amendment, approved March 30, 1874; Amendments 1873-4, 245; took effect July 1, 1874.*^(b)]

6918. Same.

SEC. 1918. Parties may agree in writing for the payment of any rate of interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

6919. Interest becomes part of principal, when.

SEC. 1919. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

6920. Interest on judgment.

SEC. 1920. Interest is payable on judgments recovered in the courts of this state, at the rate of seven per cent. per annum, and no greater rate, but such interest must not be compounded in any manner or form. [*Amendment, approved March 30, 1874; Amendments 1873-4, 245; took effect July 1, 1874.*^(c)]

TITLE V.

Hiring.

CHAPTER I. HIRING IN GENERAL.....	6925
II. HIRING OF REAL PROPERTY.....	6941
III. HIRING OF PERSONAL PROPERTY.....	6955

CHAPTER I.

HIRING IN GENERAL.

6925. Hiring, what.

SEC. 1925. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

(a) Original section:

SEC. 1915. Reward for the loan, forbearance, or use of money or its equivalent, is called interest.

(b) Original section:

SEC. 1917. Under an obligation to pay interest, no rate being specified, interest is payable at the rate of ten per cent. per annum, and in like proportion for a longer or shorter time; but in the computation of in-

terest for less than a year, three hundred and sixty days are deemed to constitute a year.

(c) Original section:

SEC. 1920. No judgment in any court of this state shall draw interest at a rate to exceed seven per cent. per annum. Interest must not be compounded in any manner or form on a judgment.

6926. *Products of thing.*

SEC. 1926. The products of a thing hired, during the hiring, belong to the hirer.

6927. *Quiet possession.*

SEC. 1927. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

6928. *Degree of care, etc., on part of hirer.*

SEC. 1928. The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

6929. *Must repair injuries, etc.*

SEC. 1929. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

6930. *Thing let for a particular purpose.*

SEC. 1930. When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use in all events, or may treat the contract as thereby rescinded.

6931. *When letter may terminate the hiring.*

SEC. 1931. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

6932. *When hirer may terminate the hiring.*

SEC. 1932. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,
2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

6933. *When hiring terminates.*

SEC. 1933. The hiring of a thing terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,
4. By the destruction of the thing hired.

6934. *When terminated by death, etc., of party.*

SEC. 1934. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

6935. *Apportionment of hire.*

SEC. 1935. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

6941. *Lessor to make dwelling-house fit for its purpose.*

SEC. 1941. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in section nineteen hundred and twenty-nine. [*Amendment, approved March 30, 1874; Amendments 1873-4, 245; took effect July 1, 1874.*^(a)

6942. *When lessee may make repairs, etc.*

SEC. 1942. If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the costs of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions. [*Amendment, approved March 30, 1874; Amendments 1873-4, 246; took effect July 1, 1874.*^(b)

6943. *Term of hiring when no limit is fixed.*

SEC. 1943. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

6944. *Hiring of lodgings for indefinite term.*

SEC. 1944. A hiring of lodgings or a dwelling house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

6945. *Renewal of lease by lessee's continued possession.*

SEC. 1945. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

6946. *Notice to quit.*

SEC. 1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

6947. *Rent, when payable.*

SEC. 1947. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

(a) Original section:

SEC. 1941. The lessor of a building intended for the occupation of human beings must put it into a condition fit for that purpose, and must repair all subsequent dilapidations thereof except such as are mentioned in section 1929.

(b) Original section:

SEC. 1942. If, within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expenses of such repairs from the rent, or otherwise recover it from the lessor.

6948. *Attornment of a tenant to a stranger.*

SEC. 1948. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

6949. *Tenant must deliver notice served on him.*

SEC. 1949. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing. [*Amendment, approved March 30, 1874; Amendments 1873-4, 246; took effect July 1, 1874.*^(a)]

6950. *Letting parts of rooms forbidden.*

SEC. 1950. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

6955. *Obligations of letter of personal property.*

SEC. 1955. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

6956. *Ordinary expenses.*

SEC. 1956. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

6957. *Extraordinary expenses.*

SEC. 1957. If a letter fails to fulfill his obligations, as prescribed by section 1955, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

6958. *Return of thing hired.*

SEC. 1958. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

6959. *Charter party, what.*

SEC. 1959. The contract by which a ship is let is termed a charter-party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer.

(a) The original section consisted of the first clause alone, down to and including the word "same."

TITLE VI.

Service.

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CHAPTER I.

SERVICE WITH EMPLOYMENT.

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ARTICLE I.

DEFINITION OF EMPLOYMENT.

6965. *Employment, what.*

SEC. 1965. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer, or of a third person.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

6969. *When employer must indemnify employee.*

SEC. 1969. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

6970. *When not.*

SEC. 1970. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person, employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

6971. *Employer to indemnify for his own negligence.*

SEC. 1971. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

6975. *Duties of gratuitous employee.*

SEC. 1975. One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

6976. *Same.*

SEC. 1976. One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

6977. *Same.*

SEC. 1977. A gratuitous employee, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

6978. *Duties of employee for reward.*

SEC. 1978. One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

6979. *Duties of employee for his own benefit.*

SEC. 1979. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

6980. *Contracts for service limited to two years.*

SEC. 1980. A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on master and servant, cannot be enforced against the employee beyond the term of two years from the commencement of service under it; but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

6981. *Employee, duty of.*

SEC. 1981. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee. [*Amendment, approved March 30, 1874; Amendments 1873-4, 246; took effect July 1, 1874.*^(a)

6982. *Employee to conform to usage.*

SEC. 1982. An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

6983. *Degree of skill required.*

SEC. 1983. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

6984. *Must use skill.*

SEC. 1984. An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified. [*Amendment, approved March 30, 1874; Amendments 1873-4, 247; took effect July 1, 1874.*^(b)

6985. *What belongs to employer.*

SEC. 1985. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

6986. *Duty to account.*

SEC. 1986. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be

(a) Original section:

SEC. 1981. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this title, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee, or in case of an emergency which, according to the best information which the employee can with reasonable diligence obtain, the employer did not contemplate, in which he cannot, with reasonable diligence, be

consulted, and in which non-compliance is judged by the employee in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases the employee must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter.

(b) The original section did not have the words, "so far as the same is required, for the service specified."

reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

6987. *Employee not bound to deliver without demand.*

SEC. 1987. An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

6988. *Preference to employer's interests.*

SEC. 1988. An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. [*Amendment, approved March 30, 1874; Amendments 1873-4, 247; took effect July 1, 1874.*^(a)]

6989. *Responsibility of employee for substitute.*

SEC. 1989. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

6990. *Responsibility for negligence.*

SEC. 1990. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

6991. *Surviving employee.*

SEC. 1991. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

6992. *Confidential employment.*

SEC. 1992. The obligations peculiar to confidential employments are defined in the title on trusts.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

6996. *Termination by death, etc., of employer.*

SEC. 1996. Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

6997. *Employment, how terminated.*

SEC. 1997. Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee; or,
4. By his legal incapacity to act as such.

6998. *Continuance of service in certain cases.*

SEC. 1998. An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor

(a) The original section had an additional sentence as follows:

"If intrusted with similar affairs by different employers, he must give them preference according to

their relative urgency, or, other things being equal, according to the order in which they were committed to him."

in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

6999. *Termination at will.*

SEC. 1999. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

7000. *Termination by employer for fault.*

SEC. 2000. An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

7001. *Termination by employee for fault.*

SEC. 2001. An employment, even for a specified term, may be terminated by the employee at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee.

7002. *Compensation of employee dismissed for cause.*

SEC. 2002. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

7003. *Compensation of employee leaving for cause.*

SEC. 2003. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

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ARTICLE I.

MASTER AND SERVANT.

7009. *Servant, what.*

SEC. 2009. A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

7010. *Term of hiring.*

SEC. 2010. A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

7011. *Same.*

SEC. 2011. In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

7012. *Renewal of hiring.*

SEC. 2012. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

7013. *Time of service.*

SEC. 2013. The entire time of a domestic servant belongs to the master; and the time of other servants to such an extent is usual in the business in which they serve, not exceeding in any case ten hours in the day.

7014. *Servant to pay over without demand.*

SEC. 2014. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person.

7015. *When servant may be discharged.*

SEC. 2015. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,
2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS.

7019. *Agent to conform to his authority.*

SEC. 2019. An agent must not exceed the limits of his actual authority, as defined by the title on agency.

7020. *Must keep his principal informed.*

SEC. 2020. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

7021. *Collecting agent.*

SEC. 2021. An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

7022. *Responsibility of sub-agent.*

SEC. 2022. A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.

FACTORS.

7026. *Factor, what.*

SEC. 2026. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

7027. *Obedience required from factor.*

SEC. 2027. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal

forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

7028. *Sales on credit.*

SEC. 2028. A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the term of credit, may not extend it.

7029. *Liability of factor under guaranty commission.*

SEC. 2029. A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

7030. *Factor cannot relieve himself from liability.*

SEC. 2030. A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

ARTICLE IV.

SHIPMASTERS.

7034. *Appointment of master.*

SEC. 2034. The master of a ship is appointed by the owner, and holds during his pleasure.

7035. *When must be on board.*

SEC. 2035. The master of a ship is bound to be always on board when entering or leaving a port, harbor or river.

7036. *Pilotage.*

SEC. 2036. On entering or leaving a port, harbor or river, the master of a ship must take a pilot if one offers himself, and while the pilot is on board the navigation of the ship devolves on him.

7037. *Power of master over seamen.*

SEC. 2037. The master of a ship may enforce the obedience of the mate and seamen to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by acts of congress, being responsible for the abuse of his power.

7038. *Power of master over passengers.*

SEC. 2038. The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands.

7039. *Impressing private stores.*

SEC. 2039. If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value, or giving security therefor.

7040. *When may abandon the ship.*

SEC. 2040. The master of a ship must not abandon it during the voyage, without the advice of the other officers.

7041. *Duties on abandonment.*

SEC. 2041. The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

7042. *When master cannot trade on his own account.*

SEC. 2042. The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

7043. *Care and diligence.*

SEC. 2043. The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

7044. *Authority of master.*

SEC. 2044. The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the title on agency.

ARTICLE V.

MATES AND SEAMEN.

7048. *Mate, what.*

SEC. 2048. The mate of a ship is the officer next in rank to the master, and in case of the master's disability he must take his place. By so doing he does not lose any of his rights as mate.

7049. *Seamen, what.*

SEC. 2049. All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this code.

7050. *Mate and seamen, how engaged and discharged.*

SEC. 2050. The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

7051. *Unseaworthy vessel.*

SEC. 2051. A mate or seaman is not bound to go to sea in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

7052. *Seamen not to lose wages or lien by agreement.*

SEC. 2052. A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of the ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

7053. *Special agreement with seamen.*

SEC. 2053. No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

7054. *Wages depend on freightage.*

SEC. 2054. Except as hereinafter provided, the wages of seamen are due when, and so far only as, freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

7055. *When wages, etc., begin.*

SEC. 2055. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

7056. *Wages, where voyage is broken up before departure.*

SEC. 2056. Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

7057. *Wrongful discharge.*

SEC. 2057. When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

7058. *Wages, when not lost by wreck.*

SEC. 2058. In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo, and stores.

7059. *Certificate.*

SEC. 2059. A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo and stores, is presumptive evidence of the fact.

7060. *Disabled seamen.*

SEC. 2060. Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding; but in case of a capture, a ratable deduction for salvage is to be made.

7061. *Maintenance of seamen during sickness.*

SEC. 2061. If a mate or seaman becomes sick or disabled during the voyage, without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

7062. *Death on the voyage.*

SEC. 2062. If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

7063. *Theft, etc., forfeits wages.*

SEC. 2063. Desertion of the ship without cause, or a justifiable discharge by the master during the voyage, for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

7064. *Seamen cannot ship goods.*

SEC. 2064. A mate or seaman may not, under any pretext, ship goods on his own account without permission from the master.

7065. [SEC. 2065^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 247; took effect July 1, 1874.]

7066. *Law governing seamen.*

SEC. 2066. The shipment of officers and seamen, and their rights and duties, are further regulated by acts of congress.

ARTICLE VI.

SHIP'S MANAGERS.

7070. *Manager, what.*

SEC. 2070. The general agent for the owners, in respect to the care of a ship

(a) Repealed section:

SEC. 2065. If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a sea-

man, the offender, or, if it is not known which is the offender, all those of whom negligence or fault may be presumed, must make good the loss.

and freight, is called the manager. If he is a part owner, he is also called the managing owner.

7071. Duties of manager.

SEC. 2071. Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of a ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate, and crew, and supplies of provisions and stores.

7072. Compensation.

SEC. 2072. A managing owner is presumed to have no right to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

7078. Voluntary interference with property.

SEC. 2078. One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

7079. Salvage.

SEC. 2079. Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the title on liens; but no claim for salvage, as such, can accrue against any vessel, or her freight, or cargo, in favor of the owners, officers, or crew of another vessel belonging to the same owners; but the actual cost at the time of the services rendered by one such vessel to another, when in distress, are payable through a general average contribution on the property saved. [*Amendment, approved March 30, 1874; Amendments 1873-4, 247; took effect July 1, 1874.*^(a)]

TITLE VII.

Carriage.

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CHAPTER I.

CARRIAGE IN GENERAL.

7085. Contract of carriage.

SEC. 2085. The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

(a) The original section did not have any portion of the latter part of the above amendment, commencing with the words "but no claim for salvage."

7086. Different kinds of carriers.

SEC. 2086. Carriage is either:

1. Inland; or,
2. Marine.

7087. Marine and inland carriers, what.

SEC. 2087. Carriers upon the ocean and upon arms of the sea are marine carriers. All others are inland carriers.

7088. Carriers by sea.

SEC. 2088. Rights and duties peculiar to carriers by sea are defined by acts of congress.

7089. Obligations of gratuitous carriers.

SEC. 2089. Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this title.

7090. Obligations of gratuitous carrier who has begun to carry.

SEC. 2090. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

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ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

7096. Degree of care required.

SEC. 2096. A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

7100. General duties of carrier.

SEC. 2100. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

7101. Vehicles.

SEC. 2101. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

7102. Not to overload his vehicle.

SEC. 2102. A carrier of persons for reward must not overcrowd or overload his vehicle.

7103. Treatment of passengers.

SEC. 2103. A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

7104. Rate of speed and delays.

SEC. 2104. A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

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ARTICLE I.

GENERAL DEFINITIONS.

7110. *Freight, consignor, etc., what.*

SEC. 2110. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

7114. *Care and diligence required of carriers.*

SEC. 2114. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

7115. *Carrier to obey directions.*

SEC. 2115. A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

7116. *Conflict of orders.*

SEC. 2116. When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

7117. *Stowage, deviation, etc.*

SEC. 2117. A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

7118. *Delivery of freight.*

SEC. 2118. A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

7119. *Place of delivery.*

SEC. 2119. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed;
2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or, if there is no wharf, on board a lighter alongside the ship; or,
3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

7120. *Obligations of carrier when freight not delivered.*

SEC. 2120. If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post-office. [*Amendment, approved March 30, 1874; Amendments 1873-4, 247; took effect July 1, 1874.*^(a)]

7121. *Carrier, how exonerated from liability.*

SEC. 2121. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him. [*Amendment, approved March 30, 1874; Amendments 1873-4, 248; took effect July 1, 1874.*^(b)]

7122. [SEC. 2122^(c) was repealed by act approved March 30, 1874; Amendments 1873-4, 248; took effect July 1, 1874.]

ARTICLE III.

BILL OF LADING.

7126. *Bill of lading, what.*

SEC. 2126. A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

7127. *Bill of lading negotiable.*

SEC. 2127. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

7128. *Same.*

SEC. 2128. When a bill of lading is made to "bearer," or in equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

7129. *Effect of bill of lading on rights, etc., of carrier.*

SEC. 2129. A bill of lading does not alter the rights or obligations of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

7130. *Bills of lading to be given to consignor.*

SEC. 2130. A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damage thereby occasioned.

7131. *Carrier exonerated by delivery according to bill of lading.*

SEC. 2131. A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

(a) The original section did not have the last sentence, and instead of "warehouseman" it had the word "carrier."

(b) The original section did not have the words "on account of the consignee."

(c) Repealed section:

SEC. 2122. If a consignee of freight cannot with reasonable diligence be found, the carrier may place it in a suitable warehouse for his account, but must give notice thereof to the consignor.

7132. *Carrier may demand surrender of bill of lading before delivery.*

SEC. 2132. When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE IV.

FREIGHTAGE.

7133. *When freightage is to be paid.*

SEC. 2136. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

7137. *Consignor, when liable for freightage.*

SEC. 2137. The consignor of freight is presumed to be liable for the freightage; but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

7138. *Consignee, when liable.*

SEC. 2138. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

7139. *Natural increase of freight.*

SEC. 2139. No freightage can be charged upon the natural increase of freight.

7140. *Apportionment by contract.*

SEC. 2140. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

7141. *Same.*

SEC. 2141. If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

7142. *Apportionment according to distance.*

SEC. 2142. If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

7143. *Freight carried further than agreed, etc.*

SEC. 2143. If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

7144. *Carrier's lien for freightage.*

SEC. 2144. A carrier has a lien for freightage, which is regulated by the title on liens.

ARTICLE V.

GENERAL AVERAGE.

7148. *Jettison and general average, what.*

SEC. 2148. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard

for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

7149. *Order of jettison.*

SEC. 2149. A jettison must begin with the most bulky and least valuable article, so far as possible.

7150. *By whom made.*

SEC. 2150. A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

7151. *Loss, how borne.*

SEC. 2151. The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage, and cargo for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

7152. *General average loss, how adjusted.*

SEC. 2152. The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere.

7153. *Values, how ascertained.*

SEC. 2153. In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

7154. *Things stowed on deck.*

SEC. 2154. The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

7155. *Application of the foregoing rules.*

SEC. 2155. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred, for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

7161. *Obligations of carrier of messages.*

SEC. 2161. A carrier of messages for reward, other than by telegraph, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier. [*Amendment, approved March 30, 1874; Amendments 1873-4, 248; took effect July 1, 1874.*]^(a)

(a) The original section consisted of the first sentence alone, leaving out the words "other than by telegraph."

7162. *Care and diligence required.*

SEC. 2162. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. [*Amendment, approved March 30, 1874; Amendments 1873-4, 249; took effect July 1, 1874.*^(a)]

CHAPTER V.

COMMON CARRIERS.

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ARTICLE I.

COMMON CARRIERS IN GENERAL.

7168. *Common carrier, what.*

SEC. 2168. Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry. [*Amendment, approved March 30, 1874; Amendments 1873-4, 249; took effect July 1, 1874.*^(b)]

7169. *Obligation to accept freight.*

SEC. 2169. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

7170. *Obligation not to give preference.*

SEC. 2170. A common carrier must not give preference, in time, price, or otherwise, to one person over another, except where expressly authorized by statute.

7171. *What preferences he must give.*

SEC. 2171. A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state.

7172. *Must start on time.*

SEC. 2172. A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel. [*Amendment, approved March 30, 1874; Amendments 1873-4, 249; took effect July 1, 1874.*^(c)]

7173. *Compensation.*

SEC. 2173. A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

7174. *Obligations, how limited.*

SEC. 2174. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract. [*Amendment, approved March 30, 1874; Amendments 1873-4, 249; took effect July 1, 1874.*^(d)]

7175. *Certain agreements void.*

SEC. 2175. A common carrier cannot be exonerated, by any agreement made

(a) The original section had an additional sentence as follows: "A carrier by telegraph must use the utmost diligence therein."

(b) The original section did not have the words "excepting only telegraphic messages."

(c) The original section consisted of the first clause alone, down to and including the words "to the public."

(d) Original section:

SEC. 2174. The rights and obligations of a common carrier cannot be altered by notice on his part, or by any other means, except a written agreement between him and the person with whom he deals.

in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

7176. Written contract carrier.

SEC. 2176. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same. [*Amendment, approved March 30, 1874; Amendments 1873-4, 249; took effect July 1, 1874.*^(a)]

7177. When not liable for loss.

SEC. 2177. A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents. [*New section, approved March 30, 1874; Amendments 1873-4, 250; took effect July 1, 1874.*]

ARTICLE II.

COMMON CARRIERS OF PERSONS.

§ 2180. A common carrier of persons, unless his vehicle is fitted for the reception of *persons* exclusively, must receive and carry a reasonable amount of luggage for each passenger, without charge, except for an excess of weight over one hundred pounds to a passenger; *provided, that if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of luggage.* [In effect, May 8, 1878.]

his vehicle is fitted for the
carry a reasonable amount
cept for an excess of weight

SEC. 2181. Luggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

7182. Liability for luggage.

SEC. 2182. The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property.

7183. Luggage, how carried and delivered.

SEC. 2183. A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk. [*Amendment, approved March 30, 1874; Amendments 1873-4, 250; took effect July 1, 1874.*^(b)]

7184. Obligation to provide vehicles.

SEC. 2184. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

(a) The original section did not have the clause commencing with the words "and also to the limitation stated," and ending with "live animals carried."

(b) The original section had the word "belongs" instead of "belonged," and did not have any of the subsequent clause, commencing with the words "except that where."

7185. *Seats for passengers.*

SEC. 2185. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

7186. *Regulations for conduct of business.*

SEC. 2186. A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

7187. *Fare, when payable.*

SEC. 2187. A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

7188. *Ejection of passengers.*

SEC. 2188. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping-place, or near some dwelling-house.

7189. *Passenger who has not paid fare.*

SEC. 2189. A passenger upon a railroad train who has not paid his fare before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay ten per cent. in addition to the regular rate.

7190. *Fare not payable after ejection.*

SEC. 2190. After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

7191. *Carrier's lien.*

SEC. 2191. A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

7194. *Liability of inland carriers for loss.*

SEC. 2194. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 2118 to 2122, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, or weakness, or a spontaneous action, of the property itself;
2. The act of a public enemy of the United States, or of this state;
3. The act of the law; or,
4. Any irresistible superhuman cause.

7195. *When exemptions do not apply.*

SEC. 2195. A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

7196. *Liability for delay.*

SEC. 2196. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence. [*Amendment, approved March 30, 1874; Amendments 1873-4, 251; took effect July 1, 1874.*^(a)]

7197. *Liability of marine carriers.*

SEC. 2197. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

(a) The original section, instead of "caused by his want of ordinary care and diligence," had the words "the effect of his ordinary negligence."

7198. *Same.*

SEC. 2198. The liability of a common carrier by sea is further regulated by acts of congress.

7199. *Perils of sea, what.*

SEC. 2199. Perils of the sea are from:

1. Storms and waves;
2. Rocks, shoals, and rapids;
3. Other obstacles, though of human origin;
4. Changes of climate;
5. The confinement necessary at sea;
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

7200. *Limitation of liability without notice.*

SEC. 2200. A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of time-pieces of any description; of negotiable paper or other valuable writings; of pictures, glass or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading. [*Amendment, approved March 30, 1874; Amendments 1873-4, 251; took effect July 1, 1874.*^(a)]

7201. *Delivery of freight beyond usual route.*

SEC. 2201. If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

7202. *Proof to be given in case of loss.*

SEC. 2202. If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

7203. *Carrier's services, other than carriage and delivery.*

SEC. 2203. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

7204. *Sale of perishable property for freightage.*

SEC. 2204. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage. [*New section, approved March 30, 1874; Amendments 1873-4, 251; took effect July 1, 1874.*]

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

7207. *Order of transmission of telegraphic messages.*

SEC. 2207. A carrier of messages by telegraph must, if it is practicable,

(a) The original section did not have the words "of statuary, silk or laces; or of plated ware of any kind;" nor did it have the last clause commencing with the words "nor is such carrier liable."

transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business;
2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use;
3. Messages giving information relating to the sickness or death of any person;
4. Other messages in the order in which they were received.

7208. *Order in other cases.*

SEC. 2208. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this state, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

7209. *Damages when message is refused or postponed.*

SEC. 2209. Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

Trust.

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CHAPTER I.

TRUSTS IN GENERAL.

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ARTICLE I.

NATURE AND CREATION OF A TRUST.

7215. *Trusts classified.*

SEC. 2215. A trust is either:

1. Voluntary; or,
2. Involuntary.

7216. *Voluntary trust, what.*

SEC. 2216. A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

7217. *Involuntary trust, what.*

SEC. 2217. An involuntary trust is one which is created by operation of law.

7218. *Parties to the contract.*

SEC. 2218. The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

7219. *What constitutes one a trustee.*

SEC. 2219. Every one who voluntarily assumes a relation of personal confidence

with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

7220. *For what purpose a trust may be created.*

SEC. 2220. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on uses and trusts and on transfers.

7221. *Voluntary trust, how created as to trustor.*

SEC. 2221. Subject to the provisions of section 852, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,
2. The subject, purpose, and beneficiary of the trust.

7222. *How created as to trustee.*

SEC. 2222. Subject to the provisions of section 852, a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,
2. The subject, purpose, and beneficiary of the trust.

7223. *Involuntary trustee, who is.*

SEC. 2223. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

7224. *Involuntary trust resulting from negligence, etc.*

SEC. 2224. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

[As to involuntary deposit, see also ante, 6816.]

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

7228. *Trustee's obligation to good faith.*

SEC. 2228. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

7229. *Trustee not to use property for his own profit.*

SEC. 2229. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust in any manner.

7230. *Certain transactions forbidden.*

SEC. 2230. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

7231. *Trustee's influence not to be used for his advantage.*

SEC. 2231. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

7232. *Trustee not to assume a trust adverse to interest of beneficiary.*

SEC. 2232. No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

7233. *To disclose adverse interest.*

SEC. 2233. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

7234. *Trustee guilty of fraud, when.*

SEC. 2234. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of a trust.

7235. *Presumption against trustees.*

SEC. 2235. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

7236. *Trustee mingling trust property with his own.*

SEC. 2236. A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

7237. *Measure of liability for breach of trust.*

SEC. 2237. A trustee who uses or disposes of the trust property, contrary to section 2229, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

7238. *Same.*

SEC. 2238. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

7239. *Co-trustees, how far liable for each other.*

SEC. 2239. A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

7243. *Third persons, when involuntary trustees.*

SEC. 2243. Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

7244. *When third person must see to application of trust property.*

SEC. 2244. One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof,

and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

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ARTICLE I.

NATURE AND CREATION OF THE TRUST.

7250. *Who are trustees within scope of this chapter.*

SEC. 2250. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such.

7251. *Creation of trust.*

SEC. 2251. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

7252. *Trustees appointed by court.*

SEC. 2252. When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

7253. *Declaration of trust.*

SEC. 2253. The nature, extent, and object of a trust are expressed in the declaration of trust.

7254. *Same.*

SEC. 2254. All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

7258. *Trustees must obey declaration of trust.*

SEC. 2258. A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee.

7259. *Degree of care and diligence in execution of trust.*

SEC. 2259. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

7260. *Duty of trustee as to appointment of successor.*

SEC. 2260. If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

7261. *Investment of money by trustee.*

SEC. 2261. A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

7262. *Interest, simple or compound, on omission to invest trust moneys.*

SEC. 2262. If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

7263. *Purchase by trustee of claims against trust fund.*

SEC. 2263. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.

POWERS OF TRUSTEES.

7267. *Trustee's powers as agent.*

SEC. 2267. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

7268. *All must act.*

SEC. 2268. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

7269. *Discretionary powers.*

SEC. 2269. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.

RIGHTS OF TRUSTEES.

7273. *Indemnification of trustee.*

SEC. 2273. A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

7274. *Compensation of trustee.*

SEC. 2274. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

7275. *Involuntary trustee.*

SEC. 2275. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

ARTICLE V.

TERMINATION OF THE TRUST.

7279. *Trust, how extinguished.*

SEC. 2279. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

7280. *Not revocable.*

SEC. 2280. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

7281. *Trustee's office, how vacated.*

SEC. 2281. The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

7282. *Trustee, how discharged.*

SEC. 2282. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he had capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the district court.

7283. *Removal by district court.*

SEC. 2283. The district court may remove any trustee who has violated or is unfit to execute the trust; or may accept the resignation of a trustee.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

7287. *Vacant trusteeship filled by court.*

SEC. 2287. The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

7288. *Survivorship between co-trustees.*

SEC. 2288. On the death, renunciation or discharge of one of several co-trustees the trust survives to the others.

7289. *District court as trustee.*

SEC. 2289. When a trust exists without any appointed trustee, or where all the trustees renounce, die or are discharged, the district court of the county where the trust property, or some portion thereof is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

TITLE IX.

Agency.

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CHAPTER I.

AGENCY IN GENERAL.

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ARTICLE I.

DEFINITION OF AGENCY.

7295. *Agency, what.*

SEC. 2295. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

7296. *Who may appoint, and who may be an agent.*

SEC. 2296. Any person having capacity to contract may appoint an agent, and any person may be an agent.

7297. *Agents, general or special.*

SEC. 2297. An agent for a particular act or transaction is called a special agent. All others are general agents.

7298. *Agency, actual or ostensible.*

SEC. 2298. An agency is either actual or ostensible.

7299. *Actual agency.*

SEC. 2299. An agency is actual when the agent is really employed by the principal.

7300. *Ostensible agency.*

SEC. 2300. An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

ARTICLE II.

AUTHORITY OF AGENTS.

7304. *What authority may be conferred.*

SEC. 2304. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

7305. *Agent may perform acts required of principal by code.*

SEC. 2305. Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

7306. *Agent cannot have authority to defraud principal.*

SEC. 2306. An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

7307. *Creation of agency.*

SEC. 2307. An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

7308. *Consideration unnecessary.*

SEC. 2308. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

7309. *Form of authority.*

SEC. 2309. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

7310. *Ratification of agent's act.*

SEC. 2310. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

7311. *Ratification of part of a transaction.*

SEC. 2311. Ratification of part of an indivisible transaction is a ratification of the whole.

7312. *When ratification void.*

SEC. 2312. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

7313. *Ratification not to work injury to third persons.*

SEC. 2313. No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

7314. *Rescission of ratification.*

SEC. 2314. A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

7315. *Measure of agent's authority.*

SEC. 2315. An agent has such authority as the principal, actually or ostensibly, confers upon him.

7316. *Actual authority, what.*

SEC. 2316. Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

7317. *Ostensible authority, what.*

SEC. 2317. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

7318. *Agent's authority as to persons having notice of restrictions upon it.*

SEC. 2318. Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

7319. *Agent's necessary authority.*

SEC. 2319. An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

7320. *Agent's power to disobey instructions.*

SEC. 2320. An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

7321. *Authority to be construed by its specific, rather than by its general terms.*

SEC. 2321. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

7322. *Exceptions to general authority.*

SEC. 2322. An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;
2. To define the scope of his agency; or,
3. To do any act which a trustee is forbidden to do by Article II, Chapter I, of the last title.

7323. *What included in authority to sell personal property.*

SEC. 2323. An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

7324. *What included in authority to sell real property.*

SEC. 2324. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

7325. *Authority of general agent to receive price of property.*

SEC. 2325. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

7326. *Authority of special agent to receive price.*

SEC. 2326. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

7330. *Principal, how affected by acts of agent within scope of authority.*

SEC. 2330. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

7331. *Principal, when bound by incomplete execution of authority.*

SEC. 2331. A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

7332. *Notice to agent, when notice to principal.*

SEC. 2332. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

7333. *Obligation of principal when agent exceeds his authority.*

SEC. 2333. When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

7334. *For acts done under a merely ostensible authority.*

SEC. 2334. A principal is bound by acts of his agent, under a merely osten-

sible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value, upon the faith thereof.

7335. *When exclusive credit is given to agent.*

SEC. 2335. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

7336. *Rights of person who deals with agent without knowledge of agency.*

SEC. 2336. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

7337. *Instrument intended to bind principal does bind him.*

SEC. 2337. An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

7338. *Principal's responsibility for agent's negligence or omission.*

SEC. 2338. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

7339. *Principal's responsibility for wrongs willfully committed by the agent.*

SEC. 2339. A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

7342. *Warranty of authority.*

SEC. 2342. One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

7343. *Agent's responsibility to third persons.*

SEC. 2343. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature.

7344. *Obligation of agent to surrender property to third person.*

SEC. 2344. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

7345. *Agent not having capacity to contract.*

SEC. 2345. The provisions of this article are subject to the provisions of Part I, Division First, of this Code.

ARTICLE V.

DELEGATION OF AGENCY.

7349. *Agent's delegation of his powers.*

SEC. 2349. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

7350. *Agent's unauthorized employment of sub-agent.*

SEC. 2350. If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

7351. *Sub-agent rightfully appointed represents principal.*

SEC. 2351. A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

7355. *Termination of agency.*

SEC. 2355. An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or,
5. The incapacity of the agency to act as such.

7356. *Same.*

SEC. 2356. Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

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ARTICLE I.

AUCTIONEERS.

7362. *Auctioneer's authority from the seller.*

SEC. 2362. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder;
2. To sell for cash only, except such articles as are usually sold on credit at auction;
3. To warrant, in like manner with other agents to sell, according to section 2323;
4. To prescribe reasonable rules and terms of sale;
5. To deliver the things sold, upon payment of the price;
6. To collect the price; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

7363. *Auctioneer's authority from the bidder.*

SEC. 2363. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract as prescribed in the title on sale.

ARTICLE II.

FACTORS.

7367. *Factor, what.*

SEC. 2367. A factor is an agent, as defined by section 2026.

7368. *Actual authority of factor.*

SEC. 2368. In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured;
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

7369. *Ostensible authority.*

SEC. 2369. A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

ARTICLE III.

SHIPMASTERS AND PILOTS.

7373. *Authority of shipmaster on behalf of shipowner.*

SEC. 2373. The master of a ship is a general agent for its owner in all matters concerning the same.

7374. *Authority to borrow.*

SEC. 2374. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

7375. *Authority of shipmaster.*

SEC. 2375. The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, but he cannot sell or hypothecate the cargo, except in the cases mentioned in this article. [*Amendment, approved March 30, 1874; Amendments 1873-4, 251; took effect July 1, 1874.*^(a)]

7376. *Power to make contracts.*

SEC. 2376. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and, in a foreign port,

(a) The original section after "interests" had only the words "except to sell or hypothecate the same."

may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

7377. Power of shipmaster to hypothecate.

SEC. 2377. The master of a ship may hypothecate the ship, freightage and cargo, and sell part of the cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others, except that the master may also sell the cargo or any part of it short of the port of destination, if found to be of such perishable nature, or in such damaged condition that if left on board or reshipped, it would be entirely lost, or would seriously endanger the interests of its owners. [*Amendment, approved March 30, 1874; Amendments 1873-4, 252; took effect July 1, 1874.*^(a)]

7378. Master's power to sell ship.

SEC. 2378. When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

7379. Master's power to sell cargo.

SEC. 2379. The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

7380. Authority to ransom ship.

SEC. 2380. The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage, and cargo.

7381. Abandonment terminates master's power.

SEC. 2381. The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

7382. Personal liability for contracts concerning the ship.

SEC. 2382. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

7383. Liability for acts of persons employed upon the ship.

SEC. 2383. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

7384. Responsibility for negligence of pilot.

SEC. 2384. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot, whether he employs him or not, he is so responsible to third persons.

7385. Obligations of shipowner to owner of cargo.

SEC. 2385. The owner of a ship is bound to pay to the owner of her cargo the market value at the time of arrival of the ship at the port of her destination, of that portion of her cargo which has been sold to enable the master to pay the necessary repairs and supplies of the ship. [*New section, approved March 30, 1874; Amendments 1873-4, 252; took effect July 1, 1874.*]

(a) Original section:

SEC. 2377. The master of a ship may hypothecate the ship, freightage, and cargo in the cases prescribed by

the chapters on bottomry and respondentia, and in no others.

ARTICLE IV.

SHIPS' MANAGERS.

7388. *What powers manager has.*

SEC. 2388. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages.

7389. *What powers he has not.*

SEC. 2389. Without special authority a ship's manager cannot borrow money or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

TITLE X.

Partnership.

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CHAPTER I.

PARTNERSHIP IN GENERAL.

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ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

7395. *Partnership, what.*

SEC. 2395. Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

7396. *Shipowners.*

SEC. 2396. Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship.

7397. *Formation of partnership.*

SEC. 2397. A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE II.

PARTNERSHIP PROPERTY.

7401. *Partnership property, what.*

SEC. 2401. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

7402. *Partner's interest in partnership property.*

SEC. 2402. The interest of each member of a partnership extends to every portion of its property.

7403. *Partner's share in profits and losses.*

SEC. 2403. In the absence of any agreement on the subject the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

7404. *When division of losses implied.*

SEC. 2404. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

7405. *Partner may require application of partnership property to payment of debts.*

SEC. 2405. Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance if any due to him.

7406. *What property is partnership property by presumption.*

SEC. 2406. Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATION OF PARTNERS.

7410. *Partners trustees for each other.*

SEC. 2410. The relations of partners are confidential. They are trustees for each other within the meaning of Chapter I of the title on trusts, and their obligations as such trustees are defined by that chapter.

7411. *Good faith to be observed between them.*

SEC. 2411. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

7412. *Mutual liability of partners to account.*

SEC. 2412. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

7413. *No compensation for services to firm.*

SEC. 2413. A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

7417. *Renunciation of future profits exonerates from liability.*

SEC. 2417. A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

7418. *Effect of renunciation.*

SEC. 2418. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

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ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

7424. *General partnership, what.*

SEC. 2424. Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership, so far only as the general partners are concerned, is a general partnership.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

7428. *Power of majority of partners.*

SEC. 2428. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

7429. *Authority of individual partner.*

SEC. 2429. Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

7430. *What authority partner has not.*

SEC. 2430. A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors;
2. To dispose of the good will of the business;
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;
4. To do any act which would make it impossible to carry on the ordinary business of the partnership;
5. To confess a judgment;
6. To submit a partnership claim to arbitration;
7. To do any other act not within the scope of the preceding section.

7431. *Partner's acts in bad faith, when ineffectual.*

SEC. 2431. A partner is not bound by any act of a copartner, in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

7435. *Profits of individual partner.*

SEC. 2435. All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

7436. *In what business partner may not engage.*

SEC. 2436. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

7437. *In what he may engage.*

SEC. 2437. A partner may engage in any separate business, except as otherwise provided by the last two sections.

7438. *Must account to firm for profits.*

SEC. 2438. A general partner transacting business contrary to the provisions of this article may be required by any copartner to account to the partnership for the profits of such business.

ARTICLE IV.

LIABILITY OF PARTNERS.

7442. *Liability of partners to third persons.*

SEC. 2442. Every general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners.

7443. *Liability for each other's acts as agents.*

SEC. 2443. The liability of general partners for each other's acts is defined by the title on agency.

7444. *Liability of one held out as partner.*

SEC. 2444. Any one permitting himself to be represented as a partner, general or special, is liable, as such, to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

7445. *No one liable as partner unless held out as such.*

SEC. 2445. No one is liable as a partner who is not such in fact, except as provided in the last section.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

7449. *Duration of partnership.*

SEC. 2449. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

7450. *Total dissolution of partnership.*

SEC. 2450. A general partnership is dissolved as to all the partners:

1. By lapse of the time prescribed by agreement for its duration;
2. By the expressed will of any partner, if there is no such agreement;
3. By the death of a partner;
4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property;
5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,
6. By a judgment of dissolution.

7451. *Partial dissolution.*

SEC. 2451. A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject however to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

7452. *Partner entitled to dissolution.*

SEC. 2452. A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting;
2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,
3. When the business of the partnership can be carried on only at a permanent loss.

7453. *Notice of termination.*

SEC. 2453. The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

7454. *Notice by change of name.*

SEC. 2454. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

ARTICLE VI.

LIQUIDATION.

7458. *Powers of partners after dissolution.*

SEC. 2458. After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

7459. *Who may act in liquidation.*

SEC. 2459. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

7460. *Who may not act in liquidation.*

SEC. 2460. If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof.

7461. *Powers of partners in liquidation.*

SEC. 2461. A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

7462. *What partner may do in liquidation.*

SEC. 2462. A partner authorized to act in liquidation, may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment when an

action thereon is barred under the provisions of the Code of Civil Procedure. [*Amendment, approved March 30, 1874; Amendments 1873-4, 252; took effect July 1, 1874.*^(a)]

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

7466. *Partnership, under fictitious name.*

SEC. 2466. Except as otherwise provided in the next section, every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county. [*Amendment, approved March 30, 1874; Amendments 1873-4, 253; took effect July 1, 1874.*^(b)]

7467. *Foreign partnerships.*

SEC. 2467. A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate, or making the publication prescribed in the last section, use in this state the partnership name used by it there, although it be fictitious, or does not show the names of the persons interested as partners in such business. [*Amendment, approved March 30, 1874; Amendments 1873-4, 253; took effect July 1, 1874.*^(c)]

7468. *Certificate of partnership to be filed.*

SEC. 2468. The certificate filed with the clerk, as provided in section twenty-four hundred and sixty-six, must be signed by the partners, and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the passage of this act. Persons doing business as partners contrary to the provisions of this article, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this state, until they have first filed the certificate and made the publication herein required. [*Amendment, approved March 30, 1874; Amendments 1873-4, 253; took effect July 1, 1874.*^(d)]

7469. *New certificate required on change of partners.*

SEC. 2469. On every change in the members of a partnership transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, except in the

(a) Original section:

SEC. 2462. A partner authorized to act in liquidation may enter, in the name of the firm, into any obligation, by way of satisfaction of a partnership debt, or as a collateral security therefor; but he cannot make, draw, or indorse any other obligation in its name, nor revive a debt against the firm, by any acknowledgment, within the provisions of the Code of Civil Procedure concerning the times of commencing civil actions.

(b) Original section:

SEC. 2466. No partnership or person may transact business by a fictitious name, or in the name of a person not interested in such business, except as prescribed in this article.

(c) Original section:

SEC. 2467. A commercial partnership, established and transacting business in a place without the United States, may use in this state the partnership name used by it there, although fictitious.

(d) Original section:

SEC. 2468. The name of a partnership, which has had business relations with places without the United States, may be continued in use by the persons succeeding to its business, and by their successors, upon compliance with the provisions of this article, and with the consent of the persons, if living, whose names are used.

cases mentioned in section twenty-four hundred and sixty-seven, a new certificate must be filed with the county clerk, and a new publication made, as required by this article on the formation of such partnership. [*Amendment, approved March 30, 1874; Amendments 1873-4, 254; took effect July 1, 1874.*^(a)

7470. *Register of firms to be kept by county clerk.*

SEC. 2470. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership, and of each partner therein. [*Amendment, approved March 30, 1874; Amendments 1873-4, 254; took effect July 1, 1874.*^(b)

7471. *Certified copies of register and proof of publication to be evidence.*

SEC. 2471. Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

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ARTICLE I.

FORMATION OF PARTNERSHIP.

7477. *Formation of special partnership.*

SEC. 2477. A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance.

7478. *Of what to consist.*

SEC. 2478. A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

7479. *Certified statement.*

SEC. 2479. Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which the partnership is to be conducted;
2. The general nature of the business intended to be transacted;
3. The names of all the partners, and their residences, specifying which are general and which are special partners;
4. The amount of capital which each special partner has contributed to the common stock;
5. The periods at which such partnership will begin and end.

7480. *Acknowledged and recorded.*

SEC. 2480. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the clerk's office, and the other recorded in the office of the recorder

(a) Original section:

SEC. 2460. On every change of the persons continuing the use of a partnership name, under the last section, the person acquiring the right to use it must sign and acknowledge, before a proper officer for that purpose, a certificate stating the name of each person dealing under such name, and his place of residence, and must file the same with the clerk of the county in which their principal place of business is situated;

and must publish such certificate, or a statement containing the substance thereof, once in each week for four successive weeks, beginning within one week after his first using such name, in a newspaper printed in the county, or nearest the county (if none is printed in the county) in which such principal place of business is situated.

(b) The original section, instead of "this article," had the words "the last section."

of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it is recorded, must be filed in the clerk's office, and recorded in like manner in the office of the recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

7481. *Affidavit as to sums contributed.*

SEC. 2481. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate.

7482. *No partnership until compliance.*

SEC. 2482. No special partnership is formed until the provisions of the last five sections are complied with.

7483. *Certificate to be published.*

SEC. 2483. The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the state nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general.

7484. *Affidavit of publication filed.*

SEC. 2484. An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

7485. *Renewal of special partnership.*

SEC. 2485. Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

7489. *Who to do business.*

SEC. 2489. The general partners only have authority to transact the business of a special partnership.

7490. *Special partners may advise.*

SEC. 2490. A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

7491. *May loan money.*

SEC. 2491. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

7492. *General partners may sue and be sued.*

SEC. 2492. In all matters relating to a special partnership, its general partners

may sue and be sued alone, in the same manner as if there were no special partners.

7493. *Withdrawal of capital.*

SEC. 2493. No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

7494. *Interest and profits.*

SEC. 2494. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

7495. *Result of withdrawing capital.*

SEC. 2495. If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

7496. *Preferential transfer void.*

SEC. 2496. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

7500. *Liability of partners.*

SEC. 2500. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

7501. *Of special partners.*

SEC. 2501. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm;

2. If he has willfully interfered with the business of the firm, except as permitted in Article II of this chapter, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of Article II of this chapter, he is liable in like manner.

7502. *Liability for unintentional act.*

SEC. 2502. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable, as a general partner; to any creditor of the firm who has been actually misled thereby to his prejudice.

7503. *Who may question existence of special partnership.*

SEC. 2503. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by Article I of this chapter.

ARTICLE IV.

ALTERATION AND DISSOLUTION.

7507. *When special partnership becomes general.*

SEC. 2507. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk and recorder with whom the original certificate of the partnership was filed, and notice thereof published as is provided in Article I of this chapter for the publication of the certificate.

7508. *How new special partners may be admitted.*

SEC. 2508. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified, acknowledged, or proved, according to the provisions of Article I of this chapter, and filed with the county clerk and recorder with whom the original certificate of the partnership was filed.

7509. *Dissolution of special partnership.*

SEC. 2509. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk and recorder with whom the original certificate was recorded, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

7510. *The name of a special partner not used, unless.*

SEC. 2510. The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited."

CHAPTER IV.

MINING PARTNERSHIPS.

7511. *When a mining partnership exists.*

SEC. 2511. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

7512. *Express agreement not necessary to constitute.*

SEC. 2512. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interest in the mine and working the same for the purpose of extracting the minerals therefrom.

7513. *Profits and losses, how shared.*

SEC. 2513. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

7514. *Lien of partners.*

SEC. 2514. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. This lien exists notwithstanding there is an agreement among the partners that it must not.

7515. *Mine, partnership property.*

SEC. 2515. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

7516. *Partnership not dissolved by sale of interest.*

SEC. 2516. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

7517. *Purchaser takes, subject to liens, unless, etc.*

SEC. 2517. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

7518 *Takes with notice of lien, when.*

SEC. 2518. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

7519. *Contract in writing, when binding.*

SEC. 2519. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

7520 *Owners of majority of shares govern.*

SEC. 2520. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

TITLE XI.

Insurance.

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CHAPTER I.

INSURANCE IN GENERAL.

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ARTICLE I.

DEFINITION OF INSURANCE.

7527. *Insurance, what.*

SEC. 2527. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

ARTICLE II.

WHAT MAY BE INSURED.

7531. *What events may be insured against.*

SEC. 2531. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

7532. *Insurance of lottery or lottery prize unauthorized.*

SEC. 2532. The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

7533. *Usual kinds of insurance.*

SEC. 2533. The most usual kinds of insurance are:

1. Marine insurance,
2. Fire insurance;
3. Life insurance;
4. Health insurance; and
5. Accident insurance.

7534. *All subject to this chapter.*

SEC. 2534. All kinds of insurance are subject to the provisions of this chapter

ARTICLE III.

PARTIES TO THE CONTRACT.

7538. *Designation of parties.*

SEC. 2538. The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

7539. *Who may insure.*

SEC. 2539. Any one capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents, and others.

7540. *Who may be insured.*

SEC. 2540. Any one except a public enemy may be insured.

7541. *Assignment to mortgagee of thing insured.*

SEC. 2541. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

7542. *New contract between insurer and assignee.*

SEC. 2542. If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.

INSURABLE INTEREST.

7546. *Insurable interest, what.*

SEC. 2546. Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

7547. *In what may consist.*

SEC. 2547. An insurable interest in property may consist in:

1. An existing interest;
2. An inchoate interest founded on an existing interest; or,
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

7548. *Interest of carrier or depositary.*

SEC. 2548. A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

7549. *Mere expectancies.*

SEC. 2549. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

7550. *Measure of interest in property.*

SEC. 2550. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

7551. *Insurance without interest, illegal.*

SEC. 2551. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

7552. *When interest must exist.*

SEC. 2552. An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

7553. *Effect of transfer.*

SEC. 2553. Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

7554. *Transfer after loss.*

SEC. 2554. A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

7555. *Exception in the case of several subjects in one policy.*

SEC. 2555. A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

7556. *In case of the death of the insurer.*

SEC. 2556. A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

7557. *In the case of transfer between co-tenants.*

SEC. 2557. A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

7558. *Policy of insurance, when void.*

SEC. 2558. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void. [*New section, approved March 30, 1874; Amendments 1873-4, 255; took effect July 1, 1874.*]

ARTICLE V.

CONCEALMENT AND REPRESENTATIONS.

7561. *Concealment, what.*

SEC. 2561. A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

7562. *Effect of concealment.*

SEC. 2562. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

7563. *What must be disclosed.*

SEC. 2563. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

7564. *Matters which need not be communicated without inquiry.*

SEC. 2564. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows;
2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;
3. Those of which the other waives communication;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,
5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

7565. *Test of materiality.*

SEC. 2565. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

7566. *Matters which each is bound to know.*

SEC. 2566. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade.

7567. *Waiver of communication.*

SEC. 2567. The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

7568. *Interest of insured.*

SEC. 2568. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by section 2587.

7569. *Fraudulent warranty.*

SEC. 2569. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

7570. *Matters of opinion.*

SEC. 2570. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

7571. *Representation, what.*

SEC. 2571. A representation may be oral or written.

7572. *When made.*

SEC. 2572. A representation may be made at the same time with issuing the policy, or before it.

7573. *How interpreted.*

SEC. 2573. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

7574. *Representation as to future.*

SEC. 2574. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

7575. *How may affect policy.*

SEC. 2575. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

7576. *When may be withdrawn.*

SEC. 2576. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

7577. *Time intended by representation.*

SEC. 2577. The completion of the contract of insurance is the time to which a representation must be presumed to refer.

7578. *Representing information.*

SEC. 2578. When a person insured has no personal knowledge of the fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the intelligence.

7579. *Falsity.*

SEC. 2579. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

7580. *Effect of falsity.*

SEC. 2580. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

7581. *Materiality.*

SEC. 2581. The materiality of a representation is determined by the same rule as the materiality of a concealment.

7582. *Application of provisions of this article.*

SEC. 2582. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

7583. *Right to rescind, when exercised.*

SEC. 2583. Whenever a right to rescind a contract of insurance is given to the

insurer by any provision of this chapter such right may be exercised at any time previous to the commencement of an action on the contract. [*New section, approved March 30, 1874; Amendments 1873-4, 255; took effect July 1, 1874.*]

ARTICLE VI.

THE POLICY.

7586. *Policy, what.*

SEC. 2586. The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

7587. *What must be specified in a policy.*

SEC. 2587. A policy of insurance must specify:

1. The parties between whom the contract is made;
2. The rate of premium;
3. The property or life insured;
4. The interest of the insured in property insured, if he is not the absolute owner thereof;
5. The risks insured against; and,
6. The period during which the insurance is to continue.

7588. *Whose interest is covered.*

SEC. 2588. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

7589. *Insurance by agent of trustee.*

SEC. 2589. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

7590. *Insurance by part owner.*

SEC. 2590. To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

7591. *General terms.*

SEC. 2591. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

7592. *Successive owners.*

SEC. 2592. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

7593. *Transfer of the thing insured.*

SEC. 2593. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

7594. *Open and valued policies.*

SEC. 2594. A policy is either open or valued.

7595. *Open policy, what.*

SEC. 2595. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

7596. *Valued policy, what.*

SEC. 2596. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

7597. *Running policy, what.*

SEC. 2597. A running policy is one which contemplates successive insurances,

and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

7598. *Effect of receipt.*

SEC. 2598. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

7599. *Agreement not to transfer.*

SEC. 2599. An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.

WARRANTIES.

7603. *Warranty, express or implied.*

SEC. 2603. A warranty is either express or implied.

7604. *Form.*

SEC. 2604. No particular form of words is necessary to create a warranty.

7605. *Warranty must be in policy.*

SEC. 2605. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured, and referred to in the policy, as making a part of it. [*Amendment, approved March 30, 1874; Amendments 1873-4, 255; took effect July 1, 1874.*^(a)]

7606. *Past, present, and future warranties.*

SEC. 2606. A warranty may relate to the past, the present, the future, or to any or all of these.

7607. *Warranty as to past or present.*

SEC. 2607. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

7608. *Warranty as to the future.*

SEC. 2608. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

7609. *Performance excused.*

SEC. 2609. When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy. [*Amendment, approved March 30, 1874; Amendments 1873-4, 255; took effect July 1, 1874.*^(b)]

7610. *What acts avoid the policy.*

SEC. 2610. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

7611. *Policy may provide for avoidance.*

SEC. 2611. A policy may declare that a violation of specified provisions thereof shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

(a) Original section:

SEC. 2605. Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, and another instrument, whether upon the same paper or not cannot be referred to as making

a part of the policy, for this purpose, even by agreement of the parties.

(b) The original section did not have the words "at the place of the contract."

7612. *Breach without fraud.*

SEC. 2612. A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

ARTICLE VIII.

PREMIUM.

7616. *When premium is earned.*

SEC. 2616. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

7617. *Return of premium.*

SEC. 2617. A person insured is entitled to a return of premium paid as follows:

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against;

2. Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. [*Amendment, approved March 30, 1874; Amendments 1873-4, 256; took effect July 1, 1874.*^(a)]

7618. *When return not allowed.*

SEC. 2618. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned. [*Amendment, approved March 30, 1874; Amendments 1873-4, 256; took effect July 1, 1874.*^(b)]

7619. *Return for fraud.*

SEC. 2619. A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

7620. *Over-insurance by several insurers.*

SEC. 2620. In case of an over-insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

7621. *Contribution.*

SEC. 2621. When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies.

7622. *Proportionate contribution.*

SEC. 2622. When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

(a) Original section:

SEC. 2617. A person insured is entitled to a return of premium paid, or a ratable proportion thereof, if no part of his interest in the thing insured is exposed to any of the perils insured against; or, where the insurance is made for a definite period of time, if it is not exposed to such peril for the whole of that time.

(b) The original section had the following additional clause: "unless the insurance was for a definite period of time, in which case he is entitled to a proportionate return under the preceding section."

ARTICLE IX.

LOSS.

7626. *Perils, remote and proximate.*

SEC. 2626. An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

7627. *Loss incurred in rescue from peril.*

SEC. 2627. An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

7628. *Excepted perils.*

SEC. 2628. Where a peril is specially excepted in a contract of insurance, a loss which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril which was not excepted.

7629. *Exoneration of insurer.*

SEC. 2629. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others. [*Amendment, approved March 30, 1874; Amendments 1873-4, 256; took effect July 1, 1874.*^(a)]

ARTICLE X.

NOTICE OF LOSS.

7633. *Insurer exonerated by failure to give notice of loss.*

SEC. 2633. In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay. [*Amendment, approved March 30, 1874; Amendments 1873-4, 256; took effect July 1, 1874.*^(b)]

7634. *Preliminary proofs.*

SEC. 2634. When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

7635. *Waivers of defects in notice, etc.*

SEC. 2635. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

7636. *Waiver of delay.*

SEC. 2636. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

7637. *Certificate, when dispensed with.*

SEC. 2637. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of

(a) The original section, instead of "or of his agents or others," had the words "nor by fraud or negligence on the part of his agents or others."

(b) The original section did not have the words "upon an insurance against fire."

such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

ARTICLE XI.

DOUBLE INSURANCE.

7641. *Double insurance.*

SEC. 2641. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

7642. *Double insurance contribution.*

SEC. 2642. In case of double insurance, the several insurers are liable to pay losses thereon as follows:

1. In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies;

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies: no liability attaching to a second or other subsequent policy except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies, is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss, is to contribute ratably. [*Amendment, approved March 30, 1874; Amendments 1873-4, 257; took effect July 1, 1874.*^(a)

ARTICLE XII.

REINSURANCE.

7646. *Reinsurance, what.*

SEC. 2646. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

7647. *Disclosures required.*

SEC. 2647. Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

7648. *Reinsurance presumed to be against liability.*

SEC. 2648. A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

7649. *Original insured has no interest.*

SEC. 2649. The original insured has no interest in a contract of reinsurance.

(a) Original section:

SEC. 2642. In case of double insurance, the insured may claim payment of a loss from any one of the insurers, who, on paying it, may require the others to contribute ratably thereto.

CHAPTER II.

MARINE INSURANCE.

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ARTICLE I.

DEFINITION OF MARINE INSURANCE.

7655. *Marine insurance, what.*

SEC. 2655. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.

INSURABLE INTEREST.

7659. *Insurable interest in a ship.*

SEC. 2659. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

7660. *Interest reduced by bottomry.*

SEC. 2660. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

7661. *Freightage, what.*

SEC. 2661. Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

7662. *Expected freightage.*

SEC. 2662. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against.

7663. *Interest in expected freightage, what.*

SEC. 2663. The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the chartered voyage, and if a price is to be paid for the carriage of goods when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

7664. *Insurable interest in profits.*

SEC. 2664. One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits.

7665. *Insurable interest of charterer.*

SEC. 2665. The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss.

ARTICLE III.

CONCEALMENT.

7669. *Information must be communicated.*

SEC. 2669. In marine insurance each party is bound to communicate, in addition to what is required by section 2563, all the information which he possesses, material to the risk, except such as is mentioned in section 2564, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

7670. *Material information.*

SEC. 2670. In marine insurance, information of the belief or expectation of a third person, in reference to a material fact, is material.

7671. *Presumption of knowledge of loss.*

SEC. 2671. A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

7672. *Concealments which only affect the risk in question.*

SEC. 2672. A concealment in a marine insurance, in respect to any of the following matters, does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

1. The national character of the insured;
2. The liability of the thing insured to capture and detention;
3. The liability to seizure from breach of foreign laws of trade;
4. The want of necessary documents; and,
5. The use of false and simulated papers.

ARTICLE IV.

REPRESENTATIONS.

7676. *Effect of intentional falsity.*

SEC. 2676. If a representation, by a person insured by a contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

7677. *Representation of expectation.*

SEC. 2677. The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

ARTICLE V.

IMPLIED WARRANTIES.

7681. *Warranty of seaworthiness.*

SEC. 2681. In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy. [*Amendment, approved March 30, 1874; Amendments 1873-4, 257; took effect July 1, 1874.*^(a)]

7682. *Seaworthiness, what.*

SEC. 2682. A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy.

(a) Original section:

SEC. 2681. In every marine insurance upon ship or freightage, or upon anything belonging to the ship-

owner, unless made for a specified length of time, a warranty is implied that the ship shall be seaworthy.

7683. *Seaworthiness, when must exist.*

SEC. 2683. An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

2. When the insurance is upon the cargo, which, by the terms of the policy or the description of the voyage, or the established custom of the trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transhipped be seaworthy at the commencement of its particular voyage. [*Amendment, approved March 30, 1874; Amendments 1873-4, 257; took effect July 1, 1874.*^(a)]

7684. *What things are required to constitute seaworthiness.*

SEC. 2684. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables and anchors, cordage and sails, food, water, fuel, and lights, and other necessary or proper stores and implements for the voyage.

7685. *Different degrees of seaworthiness at different stages of the voyage.*

SEC. 2685. Where different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

7686. *Unseaworthiness during the voyage.*

SEC. 2686. When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom.

7687. *Seaworthiness for purposes of insurance on cargo.*

SEC. 2687. A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

7688. *Neutral papers.*

SEC. 2688. Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE VI.

THE VOYAGE AND DEVIATION.

7692. *Voyage insured, how determined.*

SEC. 2692. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places.

7693. *Course of sailing, how determined.*

SEC. 2693. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous.

(a) Original section:

SEC. 2683. An implied warranty of seaworthiness is complied with if the ship is seaworthy at the time of the commencement of the risk.

7694. *Deviation, what.*

SEC. 2694. Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage.

7695. *When proper.*

SEC. 2695. A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control;
2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not;
3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,
4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

7696. *When improper.*

SEC. 2696. Every deviation not specified in the last section is improper.

7697. *Deviation exonerates the insurer.*

SEC. 2697. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

ARTICLE VII.

LOSS.

7701. *Total and partial loss.*

SEC. 2701. A loss may be either total or partial.

7702. *Partial loss.*

SEC. 2702. Every loss which is not total is partial.

7703. *Actual and constructive total loss.*

SEC. 2703. A total loss may be either actual or constructive.

7704. *Actual total loss, what.*

SEC. 2704. An actual total loss is caused by:

1. A total destruction of the thing insured;
2. The loss of the thing by sinking, or by being broken up;
3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,
4. Any other event which entirely deprives the owner of the possession, at the port of destination, of the thing insured.

7705. *Constructive total loss.*

SEC. 2705. A constructive total loss is one which gives to a person insured a right to abandon, under section 2717.

7706. *Presumed actual loss.*

SEC. 2706. An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

7707. *Insurance on cargo when voyage broken up.*

SEC. 2707. When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped. [*Amendment, approved March 30, 1874; Amendments 1873-4, 258; took effect July 1, 1874.*^(a)]

(a) The original section did not have the words "by the perils insured against."

7708. *Cost of reshipment, etc.*

SEC. 2708. In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.

7709. *When insured is entitled to payment.*

SEC. 2709. Upon an actual total loss, a person insured is entitled to payment without notice of abandonment.

7710. [SEC. 2710^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 258; took effect July 1, 1874.]

7711. *Average loss.*

SEC. 2711. Where it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless, but he is liable for his proportion of all general average loss assessed upon the thing insured. [*Amendment, approved March 30, 1874; Amendments 1873-4, 258; took effect July 1, 1874.*^(b)]

7712. *Insurance against total loss.*

SEC. 2712. An insurance confined in terms to an actual total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured. [*Amendment, approved March 30, 1874; Amendments 1873-4, 259; took effect July 1, 1874.*^(c)]

ARTICLE VIII.

ABANDONMENT.

7716. *Abandonment, what.*

SEC. 2716. Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured.

7717. *When insured may abandon.*

SEC. 2717. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost, or would have to be expended to recover it from the peril;

2. If it is injured to such an extent as to reduce its value more than one half;

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If the thing insured, being cargo or freightage, the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring the like expense or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

(a) Repealed section:

SEC. 2710. Where profits are insured, but the goods are not insured, a marine insurer is not liable for a constructive total loss unless the insured offers to abandon the goods.

(b) The original section did not have "particular

average" before the word "loss," and did not have the last clause, commencing with the words "but he is liable for his proportion."

(c) The original section did not have the word "actual." It had at the end the additional words "and also a general average loss."

7718. *Must be unqualified.*

SEC. 2718. An abandonment must be neither partial nor conditional.

7719. *When may be made.*

SEC. 2719. An abandonment must be made within a reasonable time after the information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

7720. *Abandonment may be defeated.*

SEC. 2720. Where the information upon which an abandonment has been made proves incorrect or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

7721. *How made.*

SEC. 2721. Abandonment is made by giving notice thereof to the insurer, which may be done orally, or in writing.

7722. *Requisites of notice.*

SEC. 2722. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

7723. *No other cause can be relied on.*

SEC. 2723. An abandonment can be sustained only upon the cause specified in the notice thereof.

7724. *Effect.*

SEC. 2724. An abandonment is equivalent to a transfer, by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

7725. *Waiver of former abandonment.*

SEC. 2725. If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

7726. *Agents of the insured become agents of the insurer.*

SEC. 2726. Upon an abandonment, acts done in good faith by those who were agents of the insured in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

7727. *Acceptance not necessary.*

SEC. 2727. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment.

7728. *Acceptance conclusive.*

SEC. 2728. The acceptance of an abandonment, whether expressed or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

7729. *Accepted abandonment, irrevocable.*

SEC. 2729. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

7730. *Freightage, how affected by abandonment of ship.*

SEC. 2730. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship.

7731. *Refusal to accept.*

SEC. 2731. If an insurer refuses to accept a valid abandonment, he is liable

as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

7732. *Omission to abandon.*

SEC. 2732. If a person insured omits to abandon, he may nevertheless recover his actual loss.

ARTICLE IX.

MEASURE OF INDEMNITY.

7736. *Valuation, when conclusive.*

SEC. 2736. A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

7737. *Partial loss.*

SEC. 2737. A marine insurer is liable upon a partial loss, only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured.

7738. *Profits.*

SEC. 2738. Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

7739. *Valuation apportioned.*

SEC. 2739. In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

7740. *Valuation applied to profits.*

SEC. 2740. When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

7741. *Estimating loss under an open policy.*

SEC. 2741. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured;

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival;

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

7742. *Arrival of thing damaged.*

SEC. 2742. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same

proportion of the value which the market price at that port, of the thing so damaged, bears to the market price it would have brought if sound.

7743. *Labor and expenses.*

SEC. 2743. A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby, such expense, in either case, being in addition to a total loss, if that afterwards occurs.

7744. *General average.*

SEC. 2744. A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.

7745. *Contribution subrogation of insurer.*

SEC. 2745. Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. [Amendment, approved March 30, 1874; Amendments 1873-4, 259; took effect July 1, 1874.^(a)

7746. *One third new for old.*

SEC. 2746. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, and whether the ship is new or old, a marine insurer is liable for only two thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one half per cent. for each month that it has been fastened to the ship.

CHAPTER III.

FIRE INSURANCE.

[SEC. 2752^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 259; took effect July 1, 1874.]

7753. *Alteration increasing risk.*

SEC. 2753. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

7754. *Alteration not increasing risk.*

SEC. 2754. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

7755. *Acts of the insured.*

SEC. 2755. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss.

(a) The original section consisted of the first sentence alone, down to and including the words "right to contribution."

(b) Repealed section:

SEC. 2752. An insurance against fire is not affected by

concealment, nor by the falsity of a representation not inserted in the policy, though in a material particular, unless made with a fraudulent intent.

7756. *Measure of indemnity.*

SEC. 2756. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

7762. *Insurance upon life, when payable.*

SEC. 2762. An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

7763. *Insurable interest.*

SEC. 2763. Every person has an insurable interest in the life and health:

1. Of himself;
2. Of any person on whom he depends wholly or in part for education or support;
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and
4. Of any person upon whose life any estate or interest vested in him depends.

7764. *Assignee, etc., of life policy need have no interest.*

SEC. 2764. A policy of insurance upon life or health may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

7765. *Notice of transfer.*

SEC. 2765. Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

7766. *Measure of indemnity.*

SEC. 2766. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

An Act to regulate the forfeiture of policies of life insurance.

Approved February 2, 1872; 1871-2, 59.

Life policies not to become forfeited except to ascertain extent.

SECTION 1. No policy of insurance on life hereafter issued by any company incorporated under the laws of this state shall be forfeited or become void by the non-payment of premium thereon, any further than regards the right of the party insured therein to have it continued in force beyond a certain period, to be determined as follows, to wit: the net value of the policy when the premium becomes due and is not paid shall be ascertained according to the American experience life table rate of mortality, with interest at four and a half per centum per annum, or the same interest which has been assumed in finding the net value of the policy, after deducting from such net value any indebtedness to the company, or notes held by the company against the insured, which notes, if given for premium, shall then be canceled. Four fifths of what remains shall be considered as a net single premium of temporary insurance, and the term for which it will insure shall be determined according to the age of the party at the time of the lapse of premium and the assumption of mortality and interest aforesaid.

Insurance due on death of insured.

SEC. 2. If the death of the party occur within the term of the temporary insurance covered by the value of the policy, as determined in the previous section, and if no condition of the insurance other than the payment of the premium shall have been violated by the insured, the company shall be bound to pay the amount of the policy the same as if there had been no lapse of premium, anything in the policy to the contrary notwithstanding; provided, however, that notice of the claim and proofs of death shall be submitted to the company within six months of the decease; and provided, also, that the company shall have the right to deduct from the amount insured in the policy the amount, at ten per centum per annum, of the premium that has been forborne at the time of the death.

SEC. 3. This act shall take effect immediately.

TITLE XII.

Indemnity.

7772. *Indemnity, what.*

SEC. 2772. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

7773. *Indemnity against future wrongful act void.*

SEC. 2773. An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it, to be unlawful. [*Amendment, approved March 30, 1874; Amendments 1873-4, 259; took effect July 1, 1874.*^(a)]

7774. *Indemnity for a past wrongful act valid.*

SEC. 2774. An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

7775. *Indemnity extends to acts of agents.*

SEC. 2775. An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents.

7776. *Indemnity to several.*

SEC. 2776. An agreement to indemnify several persons applies to each, unless a contrary intention appears.

7777. *Persons indemnifying liable jointly or severally with person indemnified.*

SEC. 2777. One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately, to every person injured by such act.

7778. *Rules for interpreting agreement of indemnity.*

SEC. 2778. In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable;

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof;

^(a) The original section, instead of "unlawful," had the word "wrongful."

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion;

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so;

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former;

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former;

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

7779. *When person indemnifying is a surety.*

SEC. 2779. Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

7780. *Bail, what.*

SEC. 2780. Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

7781. *How regulated.*

SEC. 2781. The obligations of bail are governed by the statutes specially applicable thereto.

TITLE XIII.

Guaranty.

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CHAPTER I.

GUARANTY IN GENERAL.

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ARTICLE I.

DEFINITION OF GUARANTY.

7787. *Guaranty, what.*

SEC. 2787. A guaranty is a promise to answer for the debt, default, or mis-carriage of another person.

7788 *Knowledge of principal not necessary to creation of guaranty.*

SEC. 2788. A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

7792. *Necessity of a consideration.*

SEC. 2792. Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

7793. *Guaranty to be in writing, etc.*

SEC. 2793. Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

7794. *Engagement to answer for obligation of another, when deemed original.*

SEC. 2794. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale;

Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a preceut debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

7799. *Acceptance of guaranty.*

SEC. 2795. A mere offer to guaranty is not binding, until notice of its acceptance communicated by the guarantee to the guarantor; but an absolute guaranty binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

7799. *Guaranty of incomplete contract.*

SEC. 29. In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor

to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

7800. *Guaranty that an obligation is good or collectible.*

SEC. 2800. A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

7801. *Recovery upon such guaranty.*

SEC. 2801. A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

7802. *Guarantor's liability upon such guaranty.*

SEC. 2802. In the cases mentioned in section 2800, the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.

LIABILITY OF GUARANTORS.

7806. *Guaranty, how construed.*

SEC. 2806. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

7807. *Liability upon guaranty of payment or performance.*

SEC. 2807. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

7808. *Liability upon guaranty of a conditional obligation.*

SEC. 2808. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

7809. *Obligation of guarantor cannot exceed that of principal.*

SEC. 2809. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

7810. *Guarantor not liable on an illegal contract.*

SEC. 2810. A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.

CONTINUING GUARANTY.

7814. *Continuing guaranty, what.*

SEC. 2814. A guaranty relating to a future liability of the principal under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

7815. *Revocation.*

SEC. 2815. A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.

EXONERATION OF GUARANTORS.

7819. *What dealings with debtor exonerate guarantor.*

SEC. 2819. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

7820. *Void promises.*

SEC. 2820. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation, or suspend or impair the remedy, within the meaning of the last section.

7821. *Rescission of alteration.*

SEC. 2821. The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

7822. *Part performance.*

SEC. 2822. The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof in the same measure as that of the principal, but does not otherwise affect it.

7823. *Delay of creditor does not discharge guarantor.*

SEC. 2823. Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

7824. *Guarantor indemnified by the debtor, not exonerated.*

SEC. 2824. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

7825. *Discharge of principal by act of law does not discharge guarantor.*

SEC. 2825. A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

ARTICLE I. WHO ARE SURETIES..	7831
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ARTICLE I.

WHO ARE SURETIES.

7831. *Surety, what.*

SEC. 2831. A surety is one who at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

7832. *Apparent principal may show that he is surety.*

SEC. 2832. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

ARTICLE II.

LIABILITY OF SURETIES.

7836. *Limit of surety's obligation.*

SEC. 2836. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

7837. *Rules of interpretation.*

SEC. 2837. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

7838. *Judgment against surety does not alter the relation.*

SEC. 2838. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

7839. *Surety exonerated by performance or offer of performance.*

SEC. 2839. Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety. [*Amendment, approved March 30, 1874; Amendments 1873-4, 260; took effect July 1, 1874.*^(a)]

7840. *Surety discharged by certain acts of the creditor.*

SEC. 2840. A surety is exonerated—

1. In like manner with a guarantor;
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

ARTICLE III.

RIGHTS OF SURETIES.

7844. *Surety has rights of guarantor.*

SEC. 2844. A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

7845. *Surety may require creditor to proceed against principal.*

SEC. 2845. A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

7846. *Surety may compel principal, etc.*

SEC. 2846. A surety may compel his principal to perform the obligation when due.

7847. *A principal bound to reimburse his surety.*

SEC. 2847. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

7848. *The surety acquires the right of the creditor.*

SEC. 2848. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal

(a) The original section, instead of "as provided in this code," had the words "whether by the principal or by another person."

to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

7849. *Surety entitled to benefit of securities held by creditor.*

SEC. 2849. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a co-surety at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

7850. *The property of principal to be taken first.*

SEC. 2850. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.

RIGHTS OF CREDITORS.

7854. *Creditor entitled to benefit of securities held by surety.*

SEC. 2854. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.

LETTER OF CREDIT.

7858. *Letter of credit, what.*

SEC. 2858. A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

7859. *How addressed.*

SEC. 2859. A letter of credit may be addressed to several persons in succession.

7860. *Liability of the writer.*

SEC. 2860. The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

7861. *Letters of credit either general or special.*

SEC. 2861. A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

7862. *Nature of general letter of credit.*

SEC. 2862. A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

7863. *Extent of general letter of credit.*

SEC. 2863. Several persons may successively give credit upon a general letter.

7864. *A letter of credit may be a continuing guaranty.*

SEC. 2864. If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

7865. *When notice to the writer necessary.*

SEC. 2865. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

7866. *The credit given must agree with the terms of the letter.*

SEC. 2866. If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

Lien.

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CHAPTER I.

LIENS IN GENERAL.

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ARTICLE I.

DEFINITION OF LIENS

§ 2872. Insert after "imposed," "in some mode other than by a transfer in trust." [In effect April 16, 1878. § 1180 C. C. P. was the same as this section, and is not amended.]

property, by which it is

7873. *Liens, general or special.*

SEC. 2873. Liens are either general or special.

7874. *General lien, what.*

SEC. 2874. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

7875. *Special lien, what.*

SEC. 2875. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

7876. *Prior liens.*

SEC. 2876. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

7877. *Contracts subject to provisions of this chapter.*

SEC. 2877. Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

ARTICLE II.

CREATION OF LIENS.

7881. *Lien, how created.*

SEC. 2881. A lien is created:

1. By contract of the parties; or,
2. By operation of law.

7882. *No lien for claim not due.*

SEC. 2882. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

7883. *Lien on future interest.*

SEC. 2883. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

7884. *Lien may be created by contract.*

SEC. 2884. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

ARTICLE III.

EFFECT OF LIENS.

7888. *Lien, or contract for lien, transfers no title.*

SEC. 2888. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

7889. *Certain contracts void.*

SEC. 2889. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

7890. *Creation of lien does not imply personal obligation.*

SEC. 2890. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

7891. *Extent of lien.*

SEC. 2891. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

7892. *Holder of lien not entitled to compensation.*

SEC. 2892. One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1892 and 1893.

ARTICLE IV.

PRIORITY OF LIENS.

7897. *Priority of liens.*

SEC. 2897. Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

7898. *Priority of mortgage for price.*

SEC. 2898. A mortgage given for the price of real property, at the time of its

conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

7899. *Order of resort to different funds.*

SEC. 2899. Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien;
2. To the things which are subject to the fewest subordinate liens;
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had—
 - (1.) To the things which have not been transferred since the prior lien was created;
 - (2.) To the things which have been so transferred without a valuable consideration; and,
 - (3.) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

ARTICLE V.

REDEMPTION FROM LIEN.

7903. *Right to redeem.*

SEC. 2903. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

7904. *Rights of inferior lienor.*

SEC. 2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

7905. *Redemption from lien, how made.*

SEC. 2905. Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.

EXTINCTION OF LIENS.

7909. *Lien deemed accessory to act whose performance it secures.*

SEC. 2909. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

7910. *Extinction by sale or conversion.*

SEC. 2910. The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

7911. *Lien extinguished by lapse of time under statute of limitations.*

SEC. 2911. A lien is distinguished by the lapse of the time within which,

under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

7912. *Apportionment of lien.*

SEC. 2912. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

7913. *Restoration of property extinguishes lien.*

SEC. 2913. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [*Amendment, approved March 30, 1874; Amendments 1873-4, 260; took effect July 1, 1874.*^(a)]

CHAPTER II.

MORTGAGE.

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ARTICLE I.

MORTGAGES IN GENERAL.

7920. *Mortgage, what.*

SEC. 2920. Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

7921. *Property adversely held, may be mortgaged.*

SEC. 2921. A mortgage may be created upon property held adversely to the mortgagor.

7922. *To be in writing.*

SEC. 2922. A mortgage can be created, renewed, or extended, only by writing, executed with the formalities required in the case of a grant of real property.

7923. *Lien of a mortgage, when special.*

SEC. 2923. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

7924. *Transfer of interest when deemed a mortgage.*

SEC. 2924. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge. [*Amendment, approved March 30, 1874; Amendments 1873-4, 260; took effect July 1, 1874.*^(b)]

7925. *Transfer made subject to defeasance may be proved.*

SEC. 2925. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

(a) The original section did not have the word "subsequently," but it had an additional clause at the end as follows: "unless such restoration is made to the owner as a mere employee of the holder of the lien, or for a

merely transient purpose."

(b) The original section did not have the words "other than in trust."

7926. Mortgage, on what lien.

SEC. 2926. A mortgage is a lien upon everything that would pass by a grant of the property.

7927. Mortgage does not entitle mortgagee to possession.

SEC. 2927. A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

7928. Mortgage not a personal obligation.

SEC. 2928. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

7929. Waste.

SEC. 2929. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

7930. Subsequently acquired title inures to mortgagee.

SEC. 2930. Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution. [*Amendment, approved March 30, 1874; Amendments 1873-4, 260; took effect July 1, 1874.*^(a)]

7931. Foreclosure.

SEC. 2931. A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure.

7932. Power of sale.

SEC. 2932. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

7933. Power of attorney to execute.

SEC. 2933. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

7934. Record of assignment of mortgage as notice.

SEC. 2934. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor. [*Amendment, approved March 30, 1874; Amendments 1873-4, 261; took effect July 1, 1874.*^(b)]

7935. When not notice to mortgagor.

SEC. 2935. When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument. [*Amendment, approved March 30, 1874; Amendments 1873-4, 261; took effect July 1, 1874.*^(c)]

7936. Mortgage passes by assignment of debt.

SEC. 2936. The assignment of a debt secured by mortgage carries with it the equity.

(a) The original section had the following additional sentence: "The priority of application of such subsequently acquired title to successive mortgagees is determined by the existing rules of priority, when no title is subsequently acquired."

(b) The original section, instead of "as a mortgage," had the words "with a mortgage, but in a separate book."

(c) Original section:

SEC. 2935. The record of the assignment of a mortgage is not of itself notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

7937. [SEC. 2937^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 261; took effect July 1, 1874.]

7938. *Mortgage, how discharged.*

SEC. 2938. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this — day of —, in the year —.
A. B., Recorder."

7939. *Same.*

SEC. 2939. A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, satisfied, or discharged.

7940. *Same.*

SEC. 2940. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

7941. *Duty of mortgagee on satisfaction of mortgage.*

SEC. 2941. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute and deliver to him a certificate of the discharge thereof, and must, at the expense of the mortgagor, acknowledge the execution thereof so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgage, who refuses to execute and deliver to the mortgagor the certificate of discharge, and to acknowledge the execution thereof, or to enter satisfaction or cause satisfaction to be entered of the mortgage, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and also forfeit to him or them the sum of one hundred dollars. [*Amendment, approved March 30, 1874; Amendments 1873-4, 261; took effect July 1, 1874.*^(b)]

7942. *Provisions of this chapter do not affect bottomry or respondentia.*

SEC. 2942. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

7947. *What real property may be mortgaged.*

SEC. 2947. Any interest in real property which is capable of being transferred may be mortgaged.

(a) Repealed section:

SEC. 2937. A mortgagee is allowed, from the date of the mortgage, one day for every twenty miles of the distance between his residence and the county recorder's office where such mortgage ought by law to be recorded. During such time the mortgage has the same effect as if recorded.

(b) Original section:

SEC. 2941. When any mortgage has been satisfied, the

mortgagee or his assignee must immediately, on demand of the mortgagor, enter satisfaction or cause satisfaction of such mortgage to be entered of record; and any mortgagee or assignee of such mortgage who neglects or refuses to enter satisfaction of such mortgage, as is provided in this chapter, is liable in damages to such mortgagor, or his grantee or heirs, in the sum of one hundred dollars, to be recovered in a civil action before any court of competent jurisdiction.

7948. *Form of mortgage.*

SEC. 2948. A mortgage of real property may be made in substantially the following form:

This mortgage, made the — day of —, in the year —, by A. B., of —, mortgagor, to C. D., of —, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of — dollars, on [or before] the — day of —, in the year —, with interest thereon [or as security for the payment of an obligation, describing it, etc.] A. B.

7949. [SEC. 2949^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 262; took effect July 1, 1874.]

7950. *Defeasance to affect grant absolute on its face, must be recorded.*

SEC. 2950. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

7951. [SEC. 2951^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 262; took effect July 1, 1874.]

7952. *Record of mortgages.*

SEC. 2952. Mortgages of real property may be acknowledged or proved, certified and recorded in like manner and with like effect, as grants thereof. [Amendment, approved March 30, 1874; Amendments 1873-4, 262; took effect July 1, 1874.^(c)

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

7955. *What personal property may be mortgaged.*

SEC. 2955. Mortgages may be made upon:

§ 2955. Seventh line, read "surveyor" instead of "surveyor," and add: "Twelfth, the machinery, casks, pipes, tubs, and utensils used in the manufacture of wine, fruit brandy, and fruit syrup or sugar."

a railroad;
chinists, foundrymen and

4. Mining machinery;
 5. Printing presses and material;
 6. Professional libraries;
 7. Instruments of a surgeon, physician or dentist;
 8. Upholstery and furniture used in hotels, lodging or boarding-houses, when mortgaged to secure the purchase-money of the articles mortgaged;
 9. Growing crops;
 10. Vessels of more than five tons burden;
 11. Instruments, negatives, furniture and fixtures of a photograph gallery.
- [Amendment, approved April 3, 1876; Amendments 1875-6, 79; took effect sixtieth day after passage.^(d)

(a) Repealed section:

SEC. 2949. Every grant of real property, or of any estate therein, which appears by any other writing to be intended as a mortgage, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together, at the same time and place, the grantee can derive no benefit from such record.

(b) Repealed section:

SEC. 2951. When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property,

without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid.

(c) The original section had the following additional clause at the end: "but they must be recorded in books kept for mortgages of real property exclusively."

(d) The original section did not have the word "lodging" in the eighth subdivision or any part of the eleventh subdivision.

7956. Form of personal mortgage.

SEC. 2956. A mortgage of personal property may be made in substantially the following form:

This mortgage, made the — day of —, in the year —, by A. B. of —, by occupation a —, mortgagor, to C. D. of —, by occupation a —, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee [here describe the property], as security for the payment to him of — dollars, on [or before] the — day of —, in the year —, with interest thereon [or, as security for the payment of a note or obligation, describing it, etc.]

A. B.

7957. When void as to third persons.

SEC. 2957. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged or proved, certified, and recorded in like manner as grants of real property.

7958. Mortgage of ships, when void as to third persons.

SEC. 2958. A mortgage of any vessel or part of any vessel under the flag of the United States is void as against any person (other than the mortgagor, his heirs, and devisee, and persons having actual notice thereof), unless the mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

7959. Where recorded.

SEC. 2959. A mortgage of personal property must be recorded in the office of the county recorder of the county in which the mortgagor resides, and also of the county in which the property mortgaged is situated, or to which it may be removed.

7960. Property in transit, where to be recorded.

SEC. 2960. For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for such transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used.

7961. Property of a common carrier, where to be recorded.

SEC. 2961. For a like purpose, personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

7962. Recorded in different places.

SEC. 2962. A single mortgage of personal property, embracing several things of such character or so situated that by the provisions of this article separate mortgages upon them would be required to be recorded in different places, is only valid in respect to the things as to which it is duly recorded.

7963. Personal mortgage may be recorded.

SEC. 2963. Except as it is otherwise in this article provided, mortgages of personal property may be acknowledged or proved and certified, recorded in like manner and with like effect as grants of real property; but they must be recorded in books kept for personal mortgages exclusively.

7964. Certified copies may be recorded, when.

SEC. 2964. A certified copy of a mortgage of personal property once recorded may be recorded in any other county, and when so recorded the record thereof has the same force and effect as though it was of the original mortgage.

7965. *Property exempt from effect of mortgage, when.*

SEC. 2965. When personal property mortgaged is thereafter by the mortgagor removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempted from the operation thereof, unless either:

1. The mortgagee, within thirty days after such removal, causes the mortgage to be recorded in the county to which the property has been removed; or,
2. The mortgagee, within thirty days after such removal, takes possession of the property, as prescribed in the next section.

7966. *May be taken by mortgagee as a pledge, when.*

SEC. 2966. If a mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

7967. *How foreclosed.*

SEC. 2967. A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on "Pledge," or by proceedings under the Code of Civil Procedure.

7968. *Mortgage property may be levied upon.*

SEC. 2968. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor.

7969. *Limitations on right of levy.*

SEC. 2969. Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county clerk or treasurer, payable to the order of the mortgagee.

7970. *Distribution of proceeds of sale under process.*

SEC. 2970. When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,
2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

7971. *Certain sections not applicable to mortgage of certain ships.*

SEC. 2971. Sections 2957, 2959, 2960, 2961, 2962, 2963, 2964, 2965, and 2966 do not apply to any mortgage of a ship or part of a ship under the flag of the

§ 2972. The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor. [In effect, April 1, 1878.]

7986. *Pledge, what.*

SEC. 2986. Pledge is a deposit of personal property by way of security for the performance of another act.

7987. *When contract is to be deemed a pledge.*

SEC. 2987. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

7988. *Delivery essential to validity of pledge.*

SEC. 2988. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed.

7989. *Increase of thing.*

SEC. 2989. The increase of property pledged is pledged with the property.

7990. *Lienor may pledge property to extent of his lien.*

SEC. 2990. One who has a lien upon property may pledge it to the extent of his lien.

7991. *Real owner cannot defeat pledge of property transferred to apparent owner for purpose of pledge.*

SEC. 2991. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

7992. *Pledge lender, what.*

SEC. 2992. Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

7993. *Pledge holder, what.*

SEC. 2993. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

7994. *When pledge lender may withdraw property pledged.*

SEC. 2994. One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge he cannot withdraw it without his consent.

7995. *Obligations of pledge holder.*

SEC. 2995. A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

7996. *Pledge holder must enforce rights of pledgee.*

SEC. 2996. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

7997. *Obligation of pledgee and pledge holder, for reward.*

SEC. 2997. A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

7998. *Gratuitous pledge holder.*

SEC. 2998. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

7999. *Debtor's misrepresentation of value of pledge.*

SEC. 2999. Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

8000. *When pledgee may sell.*

SEC. 3000. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

8001. *Demand of performance requisite before sale of pledge.*

SEC. 3001. Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found. [*Amendment, approved March 30, 1874; Amendments 1873-4, 262; took effect July 1, 1874.*^(a)]

8002. *Notice of sale to pledgor.*

SEC. 3002. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

8003. *Waiver of notice of sale.*

SEC. 3003. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

8004. *Waiver of demand.*

SEC. 3004. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner, except by contract.

8005. *Sale must be by auction.*

SEC. 3005. The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

8006. *Pledgee's sale of securities.*

SEC. 3006. A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states, or corporations; but he may collect the same when due.

8007. *Sale on the demand of the pledgor.*

SEC. 3007. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction when due.

8008. *Surplus to be paid to pledgor.*

SEC. 3008. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

8009. *Rights of pledgee on sale of pledge.*

SEC. 3009. When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due. [*Amendment, approved March 30, 1874; Amendments 1873-4, 262; took effect July 1, 1874.*^(b)]

8010. *Pledgee's purchase of property pledged.*

SEC. 3010. A pledgee, or pledge holder, cannot purchase the property pledged, except by direct dealing with the pledgor.

8011. *Pledgee may foreclose right of redemption.*

SEC. 3011. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

(a) The original section did not have the words "if the debtor can be found."

(b) Original section:

SEC. 3009. When property pledged is sold before the

claim of the pledgee is due, he may retain out of the proceeds all that can possibly become due under his claim, until it becomes due, with the proper rebate of interest.

CHAPTER IV.

BOTTOMRY.

8017. *Bottomry, what.*

SEC. 3017. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage, or period.

8018. *Owner of ship may hypothecate.*

SEC. 3018. The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

8019. *When master may hypothecate ship.*

SEC. 3019. The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship.

8020. *Same.*

SEC. 3020. The master of a ship can hypothecate it upon bottomry only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

8021. *When master may hypothecate freight money.*

SEC. 3021. The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

8022. *Rate of interest.*

SEC. 3022. Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

8023. *Rights of lender, when no necessity for bottomry existed.*

SEC. 3023. A lender upon a contract of bottomry, made by the master of a ship, as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

8024. *Stipulation for personal liability void.*

SEC. 3024. A stipulation in a contract of bottomry, imposing any liability for loan independent of the maritime risks, is void.

8025. *When money loaned is to be repaid.*

SEC. 3025. In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value of the part saved.

8026. *When bottomry loan becomes due.*

SEC. 3026. Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

8027. *Bottomry lien, how lost.*

SEC. 3027. A bottomry lien is independent of possession, and is lost by omission to exercise it within a reasonable time.

8028. *Precedence of bottomry lien over other liens.*

SEC. 3028. A bottomry lien, if created out of a real or apparent necessity, in

good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of material-men for supplies or repairs indispensable to the safety of the ship, and a subsequent lien for salvage.

8029. *Priority of bottomry liens.*

SEC. 3029. Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity:

CHAPTER V.

RESPONDENTIA.

8036. *Respondentia, what.*

SEC. 3036. Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks.

8037. *Respondentia by owner.*

SEC. 3037. The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose.

8038. *Respondentia by master.*

SEC. 3038. The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby.

8039. *Rate of interest.*

SEC. 3039. The provisions of sections 3022 to 3029 apply equally to loans on respondentia.

8040. *Obligations of shipowner.*

SEC. 3040. The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien.

CHAPTER VI.

OTHER LIENS.

8046. *Lien of seller of real property.*

SEC. 3046. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

8047. *When transfer of contract waives lien.*

SEC. 3047. Where a buyer of real property gives to the seller a written tract for payment of all or part of the price, an absolute transfer of such tract by the seller waives his lien to the extent of the sum payable under contract, but a transfer of such contract in trust to pay debts, and return^e surplus, is not a waiver of the lien.

8048. *Extent of seller's lien.*

SEC. 3048. The liens defined in sections 3046 and 3050 are valid against^{ly} one claiming under the debtor, except a purchaser or incumbrancer^{ood} of good faith and for value.

8049. *Lien of seller of personal property.*

SEC. 3049. One who sells personal property has a special lien thereon^{end-}

ent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

8050. *Purchaser's lien on real property.*

SEC. 3050. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

8051. *Lien for services.*

§ 3051. Add, "and livery, or boarding, or feed-stable proprietors and persons pasturing horses or stock have liens dependent on possession for their compensation in caring for boarding or pasturing such horses or stock." [In effect, May 28, 1878.]

while lawfully in possession of an article of
thereof by labor or skill
ing, or carriage thereof,
or the compensation, if
ce.

8052. *Liens on personal property.*

SEC. 3052. A person who makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

8053. *Lien of factor.*

SEC. 3053. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

8054. *Banker's lien.*

SEC. 3054. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

8055. *Shipmaster's lien.*

SEC. 3055. The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

8056. *Seamen's lien.*

SEC. 3056. The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage, for their wages, which is superior to every other lien.

8057. *Officer's lien.*

SEC. 3057. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

8058. *Judgment lien.*

SEC. 3058. The lien of a judgment is regulated by the Code of Civil Procedure.

8059. *Mechanic's lien.*

SEC. 3059. The liens of mechanics, for materials and services upon real property, are regulated by the Code of Civil Procedure.

8060. *Lien on ships.*

SEC. 3060. Debts amounting to at least fifty dollars, contracted for the benefit of ships, are liens in the cases provided by the Code of Civil Procedure.

CHAPTER VII.

STOPPAGE IN TRANSIT.

8076. *When consignor may stop goods.*

SEC. 3076. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

8077. *What is insolvency of consignee.*

SEC. 3077. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

8078. *Transit, when ended.*

SEC. 3078. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

8079. *Stoppage, how effected.*

SEC. 3079. Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

8080. *Effect of stoppage.*

SEC. 3080. Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

Negotiable Instruments.

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CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

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ARTICLE I.

GENERAL DEFINITIONS.

8086. *To what instruments this title is applicable.*

SEC. 3086. The provisions of this title apply only to negotiable instruments, as defined in this article.

8087. *Negotiable instrument, what.*

SEC. 3087. A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this article.

8088. *Must be for unconditional payment of money.*

SEC. 3088. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

8089. *Payee.*

SEC. 3089. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

8090. *Instrument may be in alternative.*

SEC. 3090. A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this title.

8091. *Date, etc.*

SEC. 3091. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

8092. *May contain a pledge, etc.*

SEC. 3092. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

8093. *What it must not contain.*

SEC. 3093. A negotiable instrument must not contain any other contract than such as is specified in this article.

8094. *Date.*

SEC. 3094. Any date may be inserted by the maker of a negotiable instrument, whether past, present, or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

8095. *Different classes of negotiable instruments.*

SEC. 3095. There are six classes of negotiable instruments, namely:

1. Bills of exchange;
2. Promissory notes;
3. Bank notes;
4. Checks;
5. Bonds;
6. Certificates of deposit.

ARTICLE II.

INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

8099. *Time and place of payment.*

SEC. 3099. A negotiable instrument which does not specify the time of payment, is payable immediately.

8100. *Place of payment not specified.*

SEC. 3100. A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever

he may be found. [*Amendment, approved March 30, 1874; Amendments 1873-4, 262; took effect July 1, 1874.*^(a)]

8101. *Instruments payable to a person or his order, how construed.*

SEC. 3101. An instrument, otherwise negotiable in form, payable to a person named, but with the words added, "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer.

8102. *Undorsed note, when negotiable.*

SEC. 3102. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts as if payable to the bearer.

8103. *Fictitious payee.*

SEC. 3103. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

8104. *Presumption of consideration.*

SEC. 3104. The signature of every drawer, acceptor, and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

ARTICLE III.

INDORSEMENT.

8108. *Indorsement, what.*

SEC. 3108. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.

8109. *Agreement to indorse.*

SEC. 3109. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

8110. *When may be made on separate paper.*

SEC. 3110. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

8111. *Kinds of indorsement.*

SEC. 3111. An indorsement may be general or special.

8112. *General indorsement, what.*

SEC. 3112. A general indorsement is one by which no indorsee is named.

8113. *Special indorsement, what.*

SEC. 3113. A special indorsement specifies the indorsee.

8114. *General indorsement, how made special.*

SEC. 3114. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person.

8115. *Destruction of negotiability by indorser.*

SEC. 3115. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

(a) Original section:

SEC. 3100. A negotiable instrument which does not specify a place of payment is payable wherever it is held at its maturity.

8116. *Implied warranty of indorser.*

SEC. 3116. Every indorser of a negotiable instrument, unless his indorsement is qualified, warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be;
2. That he has a good title to it;
3. That the signatures of all prior parties are binding upon them;
4. That if the instrument is dishonored, the indorser will, upon notice thereof, duly given to him, or without notice, where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections thirty-one hundred and eighty-nine, thirty-two hundred and thirteen, thirty-two hundred and forty-eight, or thirty-two hundred and fifty-five. [*Amendment, approved March 30, 1874; Amendments 1873-4, 263; took effect July 1, 1874.*^(a)]

8117. *Indorser, when liable to payee.*

SEC. 3117. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee thereon, as an indorser.

8118. *Indorsement without recourse.*

SEC. 3118. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

8119. *Same.*

SEC. 3119. Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement.

8120. *Indorsee privy to contract.*

SEC. 3120. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

8121. [SEC. 3121^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 263; took effect July 1, 1874.]

8122. *Effect of want of consideration.*

SEC. 3122. The want of consideration for the undertaking of a maker, acceptor or indorser of a negotiable instrument does not exonerate him from liability thereon to an indorser in good faith for a consideration.

8123. *Indorsee in due course, what.*

SEC. 3123. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

8124. *Rights of indorsee in due course.*

SEC. 3124. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

8125. *Instrument left blank.*

SEC. 3125. One who makes himself a party to an instrument intended to be

(a) The original section did not have the words "unless his indorsement is qualified." In the fourth subdivision, instead of "pay the same," it had the words "pay so much of the same as the holder paid therefor." The fourth subdivision did not have the words "thirty-two hundred and thirteen."

(b) Repealed section:

SEC. 3121. One who indorses a negotiable instrument,

at the request and for the accommodation of another party to the instrument, has all the rights of a surety, as defined by the chapter on suretyship, and is exonerated in like manner in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers.

negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

ARTICLE IV.

PRESENTMENT FOR PAYMENT.

8130. *Effect of want of demand on principal debtor.*

SEC. 3130. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

8131. *Presentment, how made.*

SEC. 3131. Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

1. The instrument must be presented by the holder;
2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there;
3. An instrument which specifies a place for its payment, must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein;
4. An instrument which does not specify a place for its payment, must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter; and,
5. The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;
6. If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused. [*Amendment, approved March 30, 1874; Amendments 1873-4, 263; took effect July 1, 1874.*^(a)]

8132. *Apparent maturity, when.*

SEC. 3132. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which, by its terms, it becomes due, or when that is a holiday, the next business day.

8133. *Presumptive dishonor of bill, payable after sight.*

SEC. 3133. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

(a) The original section did not have the sixth subdivision, and differed from the amendment in the second and fifth subdivisions, which were as follows:
 "2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person of discretion, if one can be found there; and if not, then it must be presented to a notary public within the state;

"5. The instrument must be presented upon the day of its apparent maturity, or, if it is payable on demand, at any time before its apparent maturity, within reasonable hours; and, if it is payable at a banking-house, within the usual banking hours of the vicinity; but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

8134. *Apparent maturity of bill, payable at sight.*

SEC. 3134. The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

8135. *Apparent maturity of note.*

SEC. 3135. The apparent maturity of a promissory note, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, six months after its date.

8136. *Same.*

SEC. 3136. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

8137. *Surrender of instrument, when condition of payment.*

SEC. 3137. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,
2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,
3. If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE V.

DISHONOR OF NEGOTIABLE INSTRUMENTS.

8141. *Dishonor, what.*

SEC. 3141. A negotiable instrument is dishonored when it is either not paid, or not accepted, according to its tenor, on presentment for that purpose, or without presentment, where that is excused.

8142. *Notice, by whom given.*

SEC. 3142. Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof; or,
2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

8143. *Form of notice.*

SEC. 3143. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

8144. *Notice, how served.*

SEC. 3144. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,
2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,
3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post-office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

8145. *Notice, how served after indorser's death.*

SEC. 3145. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or, if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section.

8146. *Notice given in ignorance of death, valid.*

SEC. 3146. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

8147. *Notice, when to be given.*

SEC. 3147. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

8148. *Notice of dishonor, when to be mailed.*

SEC. 3148. When notice of dishonor is given by mail, it must be deposited in the post-office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

8149. *Notice, how given by agent.*

SEC. 3149. When the holder of a negotiable instrument at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

8150. *Additional time for notice by indorser.*

SEC. 3150. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

8151. *Effect of notice of dishonor.*

SEC. 3151. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost.

ARTICLE VI.

EXCUSE OF PRESENTMENT AND NOTICE.

8155. *Notice of dishonor, when excused.*

SEC. 3155. Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

2. When there is no post-office communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto.

8156. *Presentment and notice, when excused.*

SEC. 3156. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder, within ten days before its maturity, that it will be dishonored.

8157. *Same.*

SEC. 3157. If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

8158. *Delay, when excused.*

SEC. 3158. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

8159. *Waiver of presentment and notice.*

SEC. 3159. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

8160. *Waiver of protest.*

SEC. 3160. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

ARTICLE VII.

EXTINCTION OF NEGOTIABLE INSTRUMENTS.

8164. *Obligation of party, when extinguished.*

SEC. 3164. The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,
2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and entitled by its terms to payment.

8165. [Sec. 3165^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 264; took effect July 1, 1874.]

CHAPTER II.

BILLS OF EXCHANGE.

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ARTICLE I.

FORM AND INTERPRETATION OF A BILL.

8171. *Bill of exchange, what.*

SEC. 3171. A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

8172. *Drawee, in case of need.*

SEC. 3172. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

(a) Repealed section:
SEC. 3165. If, after its extinction, a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor.

8173. *Bill in parts of a set.*

SEC. 3173. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

8174. *When must be in a set.*

SEC. 3174. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

8175. *Presentment, etc., of part of set.*

SEC. 3175. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

8176. *Bill, where payable.*

SEC. 3176. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable; or,
2. If it specify no place of payment, then at the place to which it is addressed; or,

3. If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence [cannot] with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment. [*Amendment, approved March 30, 1874; Amendments 1873-4, 264; took effect July 1, 1874.*^(a)]

8177. *Rights and obligations of drawer.*

SEC. 3177. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

ARTICLE II.

DAYS OF GRACE.

8181. *Days of grace.*

SEC. 3181. Days of grace are not allowed.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

8185. *When a bill may be presented.*

SEC. 3185. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused, the bill is dishonored.

8186. *Presentment for acceptance, how made.*

SEC. 3186. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

1. The bill must be presented by the holder or his agent;
2. It must be presented on a business day, and within reasonable hours;
3. It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and,
4. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-

(a) The original section, instead of the last sentence commencing with the words "if the drawee has no place of business," had a fourth subdivision as follows:

"4. If this cannot be done, then at the office of any notary public in the state."

acceptance. [*Amendment, approved March 30, 1874; Amendments 1873-4, 265; took effect July 1, 1874.*^(a)]

8187. *Presentment to joint drawees.*

SEC. 3187. Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

8188. *When presentment to be made to drawee in case of need.*

SEC. 3188. A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

8189. *Presentment, when must be made.*

SEC. 3189. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.

ACCEPTANCE.

8193. *Acceptance, how made.*

SEC. 3193. An acceptance of a bill must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

8194. *Holder entitled to acceptance on face of bill.*

SEC. 3194. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

8195. *What acceptance sufficient with consent of holder.*

SEC. 3195. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper;

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or

3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms.

8196. *Acceptance by separate instrument.*

SEC. 3196. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

8197. *Promise to accept, when equivalent to acceptance.*

SEC. 3197. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

8198. *Cancellation of acceptance.*

SEC. 3198. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

(a) The original section did not have the words "or his agent" in the first subdivision. The third and fourth subdivisions were as follows:

"3. It must be presented to the drawee, if he can be found within the state; and if not, then at his place of residence or business, if within the state, to any person of discretion therein; and if he has no such place

of residence or business, or there is no person of discretion therein, then to any notary public in the state; and,

"4. If the drawee requests it, the bill must be left with him until the same hour of the next day, to which time he may postpone his acceptance or refusal."

8199. *What acceptance admits.*

SEC. 3199. The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine. [*Amendment, approved March 30, 1874; Amendments 1873-4, 265; took effect July 1, 1874.*]^(a)

ARTICLE V.

ACCEPTANCE OR PAYMENT FOR HONOR.

8203. *When bill may be accepted or paid for honor.*

SEC. 3203. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

8204. *Holder of bill of exchange bound to accept payment for honor.*

SEC. 3204. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

8205. *Acceptance for honor, how made.*

SEC. 3205. An acceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

8206. *How enforced.*

SEC. 3206. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser; after which the acceptor for honor must pay the bill.

8207. *Notice of dishonor not excused by acceptance for honor.*

SEC. 3207. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

8211. *Presentment, when bill not accepted, where made.*

SEC. 3211. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

8212. *Presentment of bill, payable at particular place.*

SEC. 3212. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

8213. *Effect of delay in presentment, in certain cases.*

SEC. 3213. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

8214. *Effect in other cases.*

SEC. 3214. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

(a) Original section:

SEC. 3199. The acceptance of a bill of exchange admits the capacity of the drawer to draw and indorse it;

and if written upon the bill, it also admits the same to be genuine, and binding upon the drawer; but it does not admit the signature of any indorser to be genuine.

ARTICLE VII.

EXCUSE OF PRESENTMENT AND NOTICE.

8218. *Presentment, when excused.*

SEC. 3218. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

8219. *Delay, when excused.*

SEC. 3219. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

8220. *Presentment and notice, when excused.*

SEC. 3220. Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

ARTICLE VIII.

FOREIGN BILLS.

8224. *Definitions.*

SEC. 3224. An inland bill of exchange is one drawn and payable within this state. All others are foreign.

8225. *Protest necessary.*

SEC. 3225. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

8226. *Protest, by whom made.*

SEC. 3226. Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person, in the presence of two witnesses.

8227. *Protest, how made.*

SEC. 3227. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and, finally, protesting against all the parties to be charged.

8228. *Protest, where made.*

SEC. 3228. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

8229. *Protest, when to be made.*

SEC. 3229. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

8230. *Protest, when excused.*

SEC. 3230. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

8231. *Notice of protest, how given.*

SEC. 3231. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

8232. *Waiver of protest.*

SEC. 3232. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill;

except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

8233. *Declaration before payment for honor.*

SEC. 3233. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

8234. *Damages allowed on dishonor of foreign bill.*

SEC. 3234. Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this state, and protested for non-acceptance or non-payment.

8235. *Rate of damages.*

SEC. 3235. Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon any person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill;

2. If drawn upon any person out of this state, but in any of the other states west of the Rocky mountains, five dollars upon each hundred dollars of the principal sum specified in the bill;

3. If drawn upon any person in any of the United States east of the Rocky mountains, ten dollars upon each hundred dollars of the principal sum specified in the bill;

4. If drawn upon any person in any place in a foreign country, fifteen dollars upon each hundred dollars of the principal sum specified in the bill.

8236. *Interest on amount of protested bill.*

SEC. 3236. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

8237. *Damages, how estimated.*

SEC. 3237. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

8238. *Same.*

SEC. 3238. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

8244. *Promissory note, what.*

SEC. 3244. A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

8245. *Certain instruments promissory notes.*

SEC. 3245. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

8246. *Bill of exchange, when converted into a note.*

SEC. 3246. A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

8247. *Certain sections applicable to notes.*

SEC. 3247. Chapter I of this title, and sections 3181 and 3214 of this code, apply to promissory notes.

8248. *Effect of delay in presentment.*

SEC. 3248. If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused.

CHAPTER IV.

CHECKS.

8254. *Check, what.*

SEC. 3254. A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

8255. *Rules applicable to checks.*

SEC. 3255. A check is subject to all the provisions of this code concerning bills of exchange, except that:

1. The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER V.

BONDS, BANK NOTES, AND CERTIFICATES OF DEPOSIT.

8261. *Bank note negotiable after payment.*

SEC. 3261. A bank note remains negotiable, even after it has been paid by the maker.

8262. [SEC. 3262^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 265; took effect July 1, 1874.]

TITLE XVI.

General Provisions.

8268. *Parties may waive provisions of code.*

SEC. 3268. Except where it is otherwise declared, the provisions of the foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

(a) Repealed section:

SEC. 3262. A transferee of a bond, bank note, or certificate of deposit, after its apparent maturity or actual

dishonor within his knowledge, acquires a title equal to that of a transferee before such event.

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PART I.

RELIEF.

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TITLE I.

Relief in General.**8274. Species of relief.**

SEC. 3274. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code.

8275. Relief in case of forfeiture.

SEC. 3275. Whenever by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

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CHAPTER I.

DAMAGES IN GENERAL.

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ARTICLE I.

GENERAL PRINCIPLES.

8281. Person suffering detriment may recover damages.

SEC. 3281. Every person who suffers detriment from the unlawful act or

omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

8282. *Detriment, what.*

SEC. 3282. Detriment is a loss or harm suffered in person or property.

8283. *Injuries resulting or probable after suit brought.*

SEC. 3283. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

ARTICLE II.

INTEREST AS DAMAGES.

8287. *Person entitled to recover damages may recover interest thereon.*

SEC. 3287. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

8288. *In actions other than contract.*

SEC. 3288. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

8289. *Limit of rate by contract.*

SEC. 3289. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

8290. *Acceptance of principal waives claim to interest.*

SEC. 3290. Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.

EXEMPLARY DAMAGES.

8294. *Exemplary damages, in what cases allowed.*

SEC. 3294. In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

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ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

8300. *Measure of damages on breach of contract.*

SEC. 3300. For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which in the ordinary course of things, would be

likely to result therefrom. [*Amendment, approved March 30, 1874; Amendments 1873-4, 265; took effect July 1, 1874.*^(a)]

8301. *Damages must be certain.*

SEC. 3301. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

8302. *Breach of contract to pay liquidated sum.*

SEC. 3302. The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

8303. *Dishonor of foreign bills of exchange.*

SEC. 3303. For the dishonor of foreign bills of exchange the damages are prescribed by sections 3235, 3237, and 3238.

8304. *Detriment caused by breach of covenant of seizin, etc.; what is.*

SEC. 3304. The detriment caused by the breach of a covenant of "seizin," of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be :

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property;
2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years;
3. Any expenses properly incurred by the covenantee in defending his possession.

8305. *Detriment caused by breach of covenant against incumbrances.*

SEC. 3305. The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

8306. *Breach of agreement to convey real property.*

SEC. 3306. The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

8307. *Breach of agreement to buy real property.*

SEC. 3307. The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

8308. *Breach of agreement to sell personal property, not paid for.*

SEC. 3308. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

(a) The original section, after the words "detriment proximately caused thereby," proceeded as follows: "which the party in fault had notice, at the time of entering into the contract, or at any time before the

breach, and while it was in his power to perform the contract upon his part, would be likely to result from such breach, or which, in the ordinary course of things, would be likely to result therefrom."

8309. *Breach of agreement to sell personal property paid for.*

SEC. 3309. The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

8310. *Breach of agreement to pay for personal property sold.*

SEC. 3310. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

8311. *Breach of agreement to buy personal property.*

SEC. 3311. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to section 3049, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 3049, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

8312. *Breach of warranty of title to personal property.*

SEC. 3312. The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

8313. *Breach of warranty of quality of personal property.*

SEC. 3313. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

8314. *Breach of warranty of quality for special purpose.*

SEC. 3314. The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

8315. *Breach of carrier's obligation to receive goods, etc.*

SEC. 3315. The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

8316. *Breach of carrier's obligation to deliver.*

SEC. 3316. The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

8317. *Carrier's delay.*

SEC. 3317. The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise

than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered, and the day of its actual delivery.

8318. Breach of warranty of authority.

SEC. 3318. The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

8319. Breach of promise of marriage.

SEC. 3319. The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

ARTICLE II.

DAMAGES FOR WRONGS.

8333. Breach of obligation other than contract.

SEC. 3333. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

8334. Wrongful occupation of real property.

SEC. 3334. The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 3335, 3344 and 3345 of this code, or section 1174 of the Code of Civil Procedure, is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

8335. Willful holding over.

SEC. 3335. For willfully holding over real property, by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

8336. Conversion, measure of damages.

SEC. 3336. The detriment caused by the wrongful conversion of personal

§ 3336. Add to first subdivision: "Or where the action has been prosecuted with reasonable diligence the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party and." [In effect, January 22, 1871.]

conversion, with the inter-

of the property. [Amendment, approved March 30, 1874; Amendments 1873-4, 266; took effect July 1, 1874.^(a)

8337. Same.

SEC. 3337. The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

8338. Damages of lienor.

SEC. 3338. One having a mere lien on personal property, cannot recover

(a) The original section differed from the amendment in the first subdivision, which, after the words "interest from that time," proceeded as follows: "or, where the action has been prosecuted with reasonable

diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and."

greater damages for its conversion, from one having a right thereto superior to his, when his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 3336 for loss of time and expenses.

8339. *Seduction.*

SEC. 3339. The damages for seduction rest in the sound discretion of the jury.

8340. *Injuries to animals.*

SEC. 3340. For wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.

PENAL DAMAGES.

8344. *Failure to quit, after notice.*

SEC. 3344. If any tenant give notice of his intention to quit the premises, and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

8345. *Tenant, willfully holding over.*

SEC. 3345. If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

8346. *Injuries to trees, etc.*

SEC. 3346. For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

8347. *Injuries inflicted in a duel.*

SEC. 3347. If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

8348. *Same.*

SEC. 3348. If any person slays or permanently disables another person in a duel in this state, the slayer is liable for and must pay all debts of the person slain or permanently disabled.

ARTICLE IV.

GENERAL PROVISIONS.

8353. *Value, how estimated in favor of seller.*

SEC. 3353. In estimating damages, the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

8354. *Value, how estimated in favor of buyer.*

SEC. 3354. In estimating damages, except as provided by sections 3355 and 3356, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

8355. *Property of peculiar value.*

SEC. 3355. Where certain property has a peculiar value to a person recovering damages for a deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

8356. *Value of thing in action.*

SEC. 3356. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner. [*Amendment, approved March 30, 1874; Amendments 1873-4, 266; took effect July 1, 1874.*^(a)]

8357. *Damages allowed in this chapter, exclusive of others.*

SEC. 3357. The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

8358. *Limitation of damages.*

SEC. 3358. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in sections 3319, 3339, and 3340.

8359. *Damages to be reasonable.*

SEC. 3359. Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

8360. *Nominal damages.*

SEC. 3360. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

Specific and Preventive Relief.

CHAPTER I. GENERAL PRINCIPLES	8366
II. SPECIFIC RELIEF	8375
III. PREVENTIVE RELIEF	8420

CHAPTER I.

GENERAL PRINCIPLES.

8366. *Specific relief, etc., when allowed.*

SEC. 3366. Specific or preventive relief may be given in the cases specified in this title, and in no others.

(a) The original section, instead of "an instrument in writing," had the words "a thing in action."

8367. *Specific relief, how given.*

SEC. 3367. Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant;
2. By compelling a party himself to do that which ought to be done; or,
3. By declaring and determining the rights of parties, otherwise than by an award of damages.

8368. *Preventive relief, how given.*

SEC. 3368. Preventive relief is given by prohibiting a party from doing that which ought not to be done.

8369. *Not to enforce penalty, etc.*

SEC. 3369. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

CHAPTER II.

SPECIFIC RELIEF.

ARTICLE I. POSSESSION OF REAL PROPERTY.....	8375
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ARTICLE I.

POSSESSION OF REAL PROPERTY.

8375. *Judgment for possession or title.*

SEC. 3375. A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

8379. *Judgment for delivery.*

SEC. 3379. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

8380. *Owner may recover specific property.*

SEC. 3380. Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession. [*Amendment, approved March 30, 1874; Amendments 1873-4, 266; took effect July 1, 1874.*]^(a)

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

8384. *Specific performance, when compelled.*

SEC. 3384. Except as otherwise provided in this article, the specific perform-

(a) The original section had the following additional words after "possession:" "in either of the following cases: 1. When the thing claimed is held subject to an express trust in favor of the claimant; 2.

When pecuniary compensation would not afford adequate relief for the loss of the thing claimed; or, 3. When it would be extremely difficult to ascertain the actual damage caused by its loss."

ance of an obligation may be compelled. [*Amendment, approved March 30, 1874; Amendments 1873-4, 266; took effect July 1, 1874.*^(a)

8385. [SEC. 3385^(b) was repealed by act approved March 30, 1874; Amendments 1873-4, 267; took effect July 1, 1874.]

8386. *No remedy unless mutual.*

SEC. 3386. Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

8387. *Distinction between real and personal property.*

SEC. 3387. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

8388. *Contract signed by one party only, may be enforced by other.*

SEC. 3388. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

8389. *Liquidation of damages not a bar to specific performance.*

SEC. 3389. A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

8390. *What cannot be specifically enforced.*

SEC. 3390. The following obligations cannot be specifically enforced:

1. An obligation to render personal service;
2. An obligation to employ another in personal service;
3. An agreement to submit a controversy to arbitration;
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

8391. *What parties cannot be compelled to perform.*

SEC. 3391. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;
2. If it is not, as to him, just and reasonable;
3. If his assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,
4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case

(a) The original section had the following additional words after "compelled:" "1. When the act to be done is in the performance, wholly or partly, of an express trust; 2. When the act to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; 3. When it would be extremely difficult to ascertain the actual damage caused by the non-performance of the act to be done; or, 4. When it has been expressly agreed, in writing, between

the parties to the contract, that specific performance thereof may be required by either party, or that damages shall not be considered adequate relief."

(b) Repealed section:

SEC. 3385. When either of the parties to an obligation is entitled to a specific performance thereof, according to the provisions of the last section, the other party is also entitled to it, though not within those provisions."

of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

8392. *What parties cannot have specific performance in their favor.*

SEC. 3392. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

8393. [SEC. 3393^(a) was repealed by act approved March 30, 1874; Amendments 1873-4, 267; took effect July 1, 1874.]

8394. *Agreement to sell property by one who has no title.*

SEC. 3394. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

8395. *Relief against parties claiming under person bound to perform.*

SEC. 3395. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.

REVISION OF CONTRACTS.

8399. *When contract may be revised.*

SEC. 3399. When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

8400. *Presumption as to intent of parties.*

SEC. 3400. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

8401. *Principles of revision.*

SEC. 3401. In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

8402. *Enforcement of revised contract.*

SEC. 3402. A contract may be first revised and then specifically enforced.

ARTICLE V.

RESCISSION OF CONTRACTS.

8406. *When rescission may be adjudged.*

SEC. 3406. The rescission of a written contract may be adjudged, on the application of a party aggrieved:

(a) Repealed section;
SEC. 3393. Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

1. In any of the cases mentioned in section 1589; or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

8407. *Rescission for mistake.*

SEC. 3407. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

8408. *Court may require party rescinding to do equity.*

SEC. 3408. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

8412. *When cancellation may be ordered.*

SEC. 3412. A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

8413. *Instrument obviously void.*

SEC. 3413. An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of the last section.

8414. *Cancellation in part.*

SEC. 3414. Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

8420. *Preventive relief, how granted.*

SEC. 3420. Preventive relief is granted by injunction, provisional or final.

8421. *Provisional injunctions.*

SEC. 3421. Provisional injunctions are regulated by the Code of Civil Procedure.

8422. *Injunction, when allowed.*

SEC. 3422. Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;
2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
4. Where the obligation arises from a trust.

8423. *Injunction, when not allowed.*

SEC. 3423. An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

2. To stay proceedings in a court of the United States;
3. To stay proceedings in another state upon a judgment of a court of that state;
4. To prevent the execution of a public statute, by officers of the law, for the public benefit;
5. To prevent the breach of a contract, the performance of which would not be specifically enforced;
6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession;
7. To prevent a legislative act by a municipal corporation. [*Amendment, approved March 30, 1874; Amendments 1873-4, 267; took effect July 1, 1874.*^(a)]

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. GENERAL PRINCIPLES.....	8429
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III. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.....	8449

TITLE I.

General Principles.

8429. *Who is a debtor.*

SEC. 3429. A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

8430. *Who is a creditor.*

SEC. 3430. A creditor, within the meaning of this title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

8431. *Contracts of debtor are valid.*

SEC. 3431. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

8432. *Payments in preference.*

SEC. 3432. A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

8433. *Relative rights of different creditors.*

SEC. 3433. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled

(a) The original section had nine subdivisions, the seventh and eighth of which were like the above sixth and seventh. The sixth and ninth of the original were as follows:

"6. To prevent an injury to the person, character, or personal relations of the applicant, not amounting to a

nuisance; except that in an action for divorce, an injunction may be granted to prevent interference with a wife or child;

"9. Where relief, equally efficacious, can be obtained by any other usual mode of proceeding, except in case of breach of trust."

as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

Fraudulent Instruments and Transfers.

8439. *Transfer, etc., with intent to defraud creditors.*

SEC. 3439. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

8440. *Certain transfers presumed fraudulent.*

SEC. 3440. Every transfer of personal property, other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

8441. *Creditor's right must be judicially ascertained.*

SEC. 3441. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

8442. *Question of fraud, how determined.*

SEC. 3442. In all cases arising under section 1227, or under the provisions of this title, except as otherwise provided in section 3440, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

TITLE III.

Assignments for the Benefit of Creditors.

8449. *When debtor may execute assignment.*

SEC. 3449. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter; subject, however, to the provisions of this code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations, or by other specific classes or persons.

8450. *Insolvency, what.*

SEC. 3450. A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means, as they become due.

8451. *Certain transfers not affected.*

SEC. 3451. The provisions of this title do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or part of a debt owing to such creditor, whether in his own right or otherwise.

8452. *What debts may be secured.*

SEC. 3452. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

8453. [SECS. 3453, 3454, 3455, and 3456,^(a) were repealed by act, approved March 30, 1874; Amendments 1873-4, 267; took effect July 1, 1874.]

8457. *Assignment, when void.*

SEC. 3457. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

1. If it give a preference of one debt or class of debts over another;
2. If it tend to coerce any creditor to release or compromise his demand;
3. If it provide for the payment of any claim known to the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor;
4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid;
5. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;
6. If it exempt him from liability for neglect of duty or misconduct. [*Amendment, approved March 30, 1874; Amendments 1873-4, 267; took effect July 1, 1874.*]^(b)

8458. *The instrument of assignment.*

SEC. 3458. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and recorded as required by sections 3463 and 3464; but recording in one county constitutes a compliance with the following section.

(a) Repealed sections:

SEC. 3453. Except as otherwise specially provided by statute, an assignment by an insolvent debtor, for the benefit of creditors, may give a preference to one or more creditors or classes of creditors in the following cases, and in no others: 1. Judgments may be preferred to debts not in judgment; 2. Debts which are liens or charges upon the assigned property, or upon some part of it, may be preferred to debts which are not such liens or charges; 3. Debts for money or other property lent without interest may be preferred for debts for money lent upon interest, or for property sold; 4. Debts due from the assignor by virtue of a trust may be preferred to debts which are not thus due; and, 5. Debts for personal services performed within six months next before the assignment may, to an extent not exceeding one hundred dollars to any one person, be preferred to other debts not within any of the preceding classes.

SEC. 3454. A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

SEC. 3455. No provision in an assignment, giving a preference to a creditor, can affect or impair any right of another creditor to priority of payment, whether created by law, or arising from an obligation or transaction of the parties.

SEC. 3456. Joint, or joint and several debtors, can prefer their joint creditors only out of joint property; and can prefer the individual creditors of each, only out of the separate property of each.

(b) The original section had eight subdivisions; the third, fifth, sixth and seventh were like the second, fourth, fifth and sixth above. In the first it did not have the word "unlawful," and in the fourth, otherwise like the above third, it did not have the words "known to be." The second and eighth were as follows:

"2. If it gives a preference dependent upon any condition or contingency, or with any power of revocation reserved;

"8. If it violates section 3456 of this code."

8459. *Compliance with provisions of last section necessary to validity of assignment.*

SEC. 3459. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

8460. *Assignee takes, subject to rights of third parties.*

SEC. 3460. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

8461. *Inventory required.*

SEC. 3461. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 3463, a full and true inventory, showing:

1. All the creditors of the assignor;
2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated;
3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;
4. The true consideration of the liability in each case, and the place where it arose;
5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;
6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,
7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

8462. *Verification of inventory.*

SEC. 3462. An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

8463. *Recording assignment and filing inventory.*

SEC. 3463. An assignment for the benefit of creditors must be recorded, and the inventory required by section 3461 filed with the county recorder of the

§ 3465. Erase the word "not" in fourth line. [In effect, April 26, 1878.]

the assignment; or, if he the county in which his had not then a residence the county in which the ted.

liters is executed by more the inventory required by county in which any of the , not then residing in this

rs is void against creditors rancers in good faith and entory required by section enty days after the date of

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ACT TO PROTECT STOCKHOLDERS AND PERSONS DEALING WITH CORPORATIONS IN THIS STATE.

1. Any superintendent, director, secretary, manager, or other officer of any corporation formed or existing under the laws of this State, or transacting business in the same, or any person pretending or holding himself out as such superintendent, director, secretary, manager, agent, or other officer, who shall willfully subscribe, sign, indorse, verify, or otherwise assent to the publication, either generally or privately, to stockholders or other persons dealing with such corporation, of its stock, any untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, balance sheet, business, profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation, a greater value or less apparent or market value than he actually possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the State prison, or a county jail, not exceeding two years, or by fine not exceeding five hundred dollars, or by both, provided that this act shall not be applied to corporations whose capital stock is listed at a Stock Board or Stock Exchange in this State, or whose shares are regularly bought and sold in the stock market of this State. [Approved, March 29, 1878.]

8466. *Assignment of real property.*

SEC. 3466. Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of Article IV of the chapter on recording transfers, as well as to those of this title.

8467. *Bond of assignees.*

SEC. 3467. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the people of this state, in such amount as may be fixed by the county judge of the county in which the original inventory is filed, with sufficient sureties, to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

8468. *Conditions of disposal and conversion.*

SEC. 3468. Until the inventory and affidavit required by sections 3461 and 3462 have been made and filed, and the assignee has given a bond as required by the last section, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

8469. *Accountings.*

SEC. 3469. After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the county judge of the county where the accompanying inventory was filed, in the manner prescribed by the insolvent laws of this state.

8470. *Property exempt.*

SEC. 3470. Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

8471. *Compensation.*

SEC. 3471. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians; but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

8472. *Assignees protected for acts done in good faith.*

SEC. 3472. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

8473. *Assent of creditor necessary to modification of assignment.*

SEC. 3473. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

PART III.
NUISANCE.

TITLE I. GENERAL PRINCIPLES..... 8479
II. PUBLIC NUISANCES..... 8490
III. PRIVATE NUISANCES..... 8501

TITLE I.

General Principles.

8479. *Nuisance, what.*

SEC. 3479. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. [*Amendment, approved March 30, 1874; Amendments 1873-4, 268; took effect July 1, 1874.*^(a)

8480. *Public nuisance.*

SEC. 3480. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. [*Amendment, approved March 30, 1874; Amendments 1873-4, 268; took effect July 1, 1874.*^(b)

[The amendatory act of March 30, 1874 (Amendments 1873-4, 181-269), from which most of the foregoing amendments and new sections of the Civil Code are taken, contained three additional sections, relating to its effect, as follows:]

Effect of amendatory act of March 30, 1874.

SEC. 286. All provisions of law inconsistent with the provisions of this act are hereby repealed, but no rights acquired or proceedings taken under the provisions repealed, shall be impaired or in any manner affected by this repeal; and whenever a limitation or period of time is prescribed by such repealed provisions for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this act takes effect, and the same or any other limitation is prescribed by this act, the time of limitation which shall have run when this act takes effect shall be deemed part of the time prescribed by this act.

Effect of amendatory act as to other acts passed at session of 1871-2.

SEC. 287. With relation to the laws passed at the present session of the legislature, this act must be construed as though it had been passed at the first day of the present session; if the provisions of any law passed at the present session of the legislature contravene or are inconsistent with the provisions of this act, the provisions of such law must prevail.

(a) Original section:
SEC. 3479. A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:
1. Annoys, injures, or endangers the comfort, repose, health, or safety of others; or,
2. Offends decency; or,
3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake,

or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; or,
4. In any way renders other persons insecure in life, or in the use of property.
(b) Original section:
SEC. 3480. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

SEC. 288. This act shall take effect on the first day of July, one thousand eight hundred and seventy-four.

8481. *Private nuisance.*

SEC. 3481. Every nuisance not included in the definition of the last section is private.

8482. *What is not deemed a nuisance.*

SEC. 3482. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

8483. *Successive owners.*

SEC. 3483. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

8484. *Abatement does not preclude action.*

SEC. 3484. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

TITLE II.

Public Nuisances.

8490. *Lapse of time does not legalize.*

SEC. 3490. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

8491. *Abatement.*

SEC. 3491. The remedies against a public nuisance are:

1. Indictment;
2. A civil action; or,
3. Abatement.

8492. *Indictment.*

SEC. 3492. The remedy by indictment is regulated by the Penal Code.

8493. *Action.*

SEC. 3493. A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

8494. *Abatement, by whom.*

SEC. 3494. A public nuisance may be abated by any public body or officer authorized thereto by law.

8495. *How abated.*

SEC. 3495. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

TITLE III.

Private Nuisances.

8501. *Remedies for private nuisance.*

SEC. 3501. The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

8502. *Abatement, when allowed.*

SEC. 3502. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

8503. *When notice is required.*

SEC. 3503. Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

8509. SEC. 3509. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

8510. SEC. 3510. When the reason of a rule ceases, so should the rule itself.

8511. SEC. 3511. Where the reason is the same, the rule should be the same.

8512. SEC. 3512. One must not change his purpose to the injury of another.

8513. SEC. 3513. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

8514. SEC. 3514. One must so use his own rights as not to infringe upon the rights of another.

8515. SEC. 3515. He who consents to an act is not wronged by it.

8516. SEC. 3516. Acquiescence in error takes away the right of objecting to it.

8517. SEC. 3517. No one can take advantage of his own wrong.

8518. SEC. 3518. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

8519. SEC. 3519. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

8520. SEC. 3520. No one should suffer by the act of another.

8521. SEC. 3521. He who takes the benefit must bear the burden.

8522. SEC. 3522. One who grants a thing is presumed to grant also whatever is essential to its use.

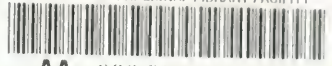
8523. SEC. 3523. For every wrong there is a remedy.

8524. SEC. 3524. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

8525. SEC. 3525. Between rights otherwise equal, the earliest is preferred.
8526. SEC. 3526. No man is responsible for that which no man can control.
8527. SEC. 3527. The law helps the vigilant, before those who sleep on their rights.
8528. SEC. 3528. The law respects form less than substance.
8529. SEC. 3529. That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.
8530. SEC. 3530. That which does not appear to exist is to be regarded as if it did not exist.
8531. SEC. 3531. The law never requires impossibilities.
8532. SEC. 3532. The law neither does nor requires idle acts.
8533. SEC. 3533. The law disregards trifles.
8534. SEC. 3534. Particular expressions qualify those which are general.
8535. SEC. 3535. Contemporaneous exposition is in general the best.
8536. SEC. 3536. The greater contains the less.
8537. SEC. 3537. Superfluity does not vitiate.
8538. SEC. 3538. That is certain which can be made certain.
8539. SEC. 3539. Time does not confirm a void act.
8540. SEC. 3540. The incident follows the principal, and not the principal the incident.
8541. SEC. 3541. An interpretation which gives effect is preferred to one which makes void.
8542. SEC. 3542. Interpretation must be reasonable.
8543. SEC. 3543. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

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